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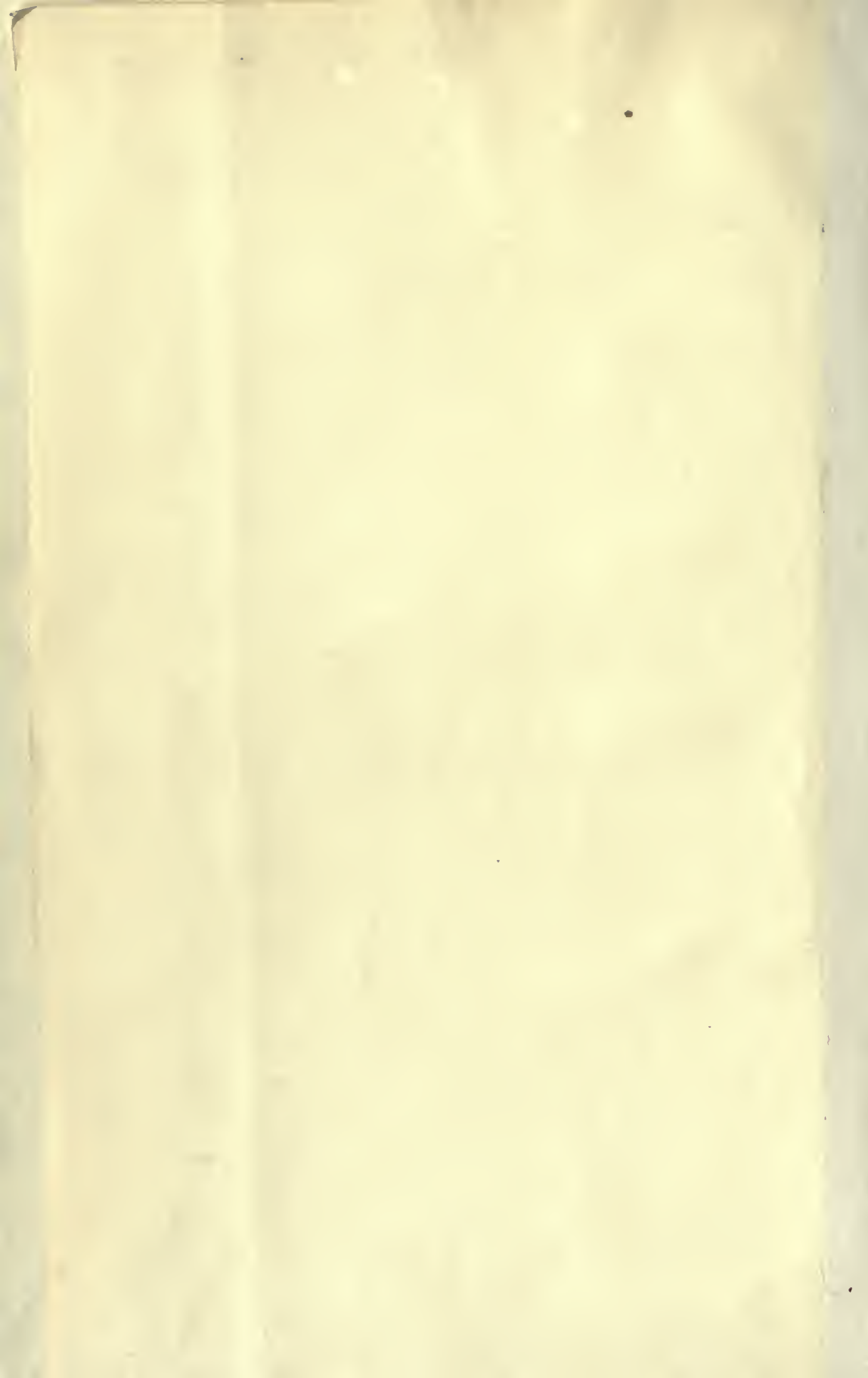
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Canada, Justice, Dept of

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CORRESPONDENCE,

REPORTS OF THE MINISTERS OF JUSTICE

AND

ORDERS IN COUNCIL

UPON THE SUBJECT OF

DOMINION AND PROVINCIAL LEGISLATION

1867-1895

COMPILED UNDER THE DIRECTION OF THE HONOURABLE  
THE MINISTER OF JUSTICE

BY

W. E. HODGINS, M.A.,

*Barrister at Law, of the Department of Justice.*



OTTAWA  
GOVERNMENT PRINTING BUREAU  
1896



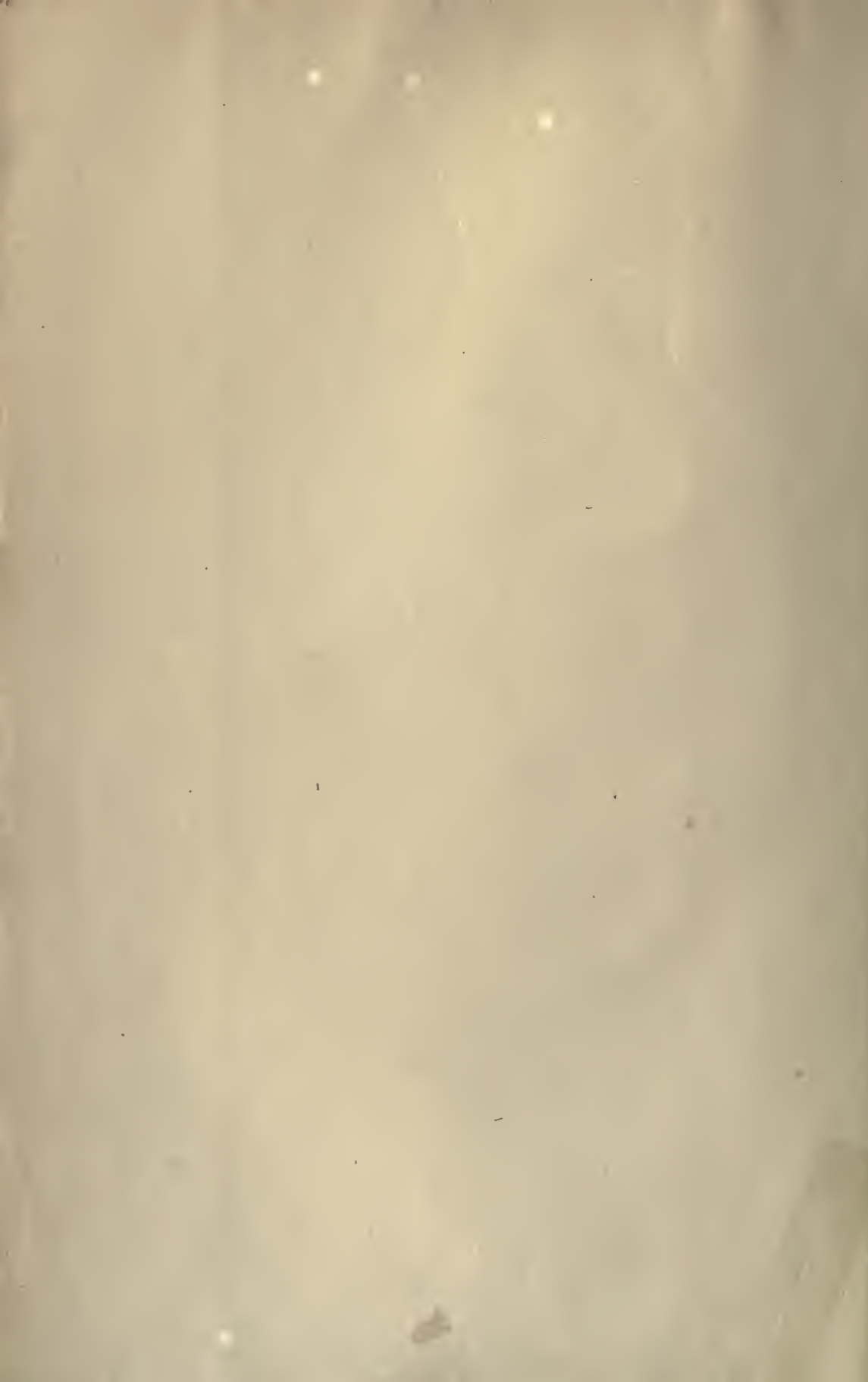
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## IMPERIAL SUPERVISION OVER DOMINION LEGISLATION.

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By Section 17 of the British North America Act the Queen is a constituent part of the Parliament of Canada, and her assent is therefore necessary before any bill which has passed both Houses can become law. The Governor General, as her representative, may assent to any such bill, or he may refuse assent, or he may reserve the bill for Her Majesty's consideration, and the signification of her pleasure thereon.

The following sections of the British North America Act have reference to the reservation of, and royal assent to, bills, and to the disallowance of Acts passed by the Parliament of Canada.

*Section 55.* "Where a bill passed by the Houses of Parliament is presented to the Governor General for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserves the bill for the signification of the Queen's pleasure."

(See Colonial Laws Validity Act (1865) 28 and 29 Vic. (Imp.), chapter 63, section 42 of which is as follows:—

"No colonial law, passed with the concurrence of, or assented to, by the governor of any colony, or to be hereafter so passed or assented to, shall be, or be deemed to have been, void and inoperative by reason only of any instructions with reference to such law, or the subject thereof, which may have been given to such governor by or on behalf of Her Majesty, by any instrument other than the letters patent or instrument authorizing such governor to concur in passing, or to assent to laws for the peace, order and good government of such colony, even though such instructions may be referred to in such letters patent, or last mentioned instrument.")

*Section 56.* "Where the governor assents to a bill in the Queen's name, he shall, by the first convenient opportunity, send an authentic copy of the Act to one of Her Majesty's principal Secretaries of State, and if the Queen in Council, within two years after receipt thereof by the Secretary of State, thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor General, by speech or message to each of the Houses of the Parliament, or by proclamation, shall annul the Act from and after the day of such signification.

*Section 57.* "A bill reserved for the signification of the Queen's pleasure shall not have any force unless or until within two years from the day on which it was presented to the Governor General for the Queen's assent, the Governor General signifies, by speech or message, to each of the Houses of Parliament, or by proclamation, that it has received the assent of the Queen in Council.

"An entry of every such speech, message or proclamation, shall be made in the Journal of each House, and a duplicate thereof, duly attested, shall be delivered to the proper officer, to be kept among the records of Canada."

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IMPERIAL DESPATCHES, Correspondence, Reports, &c., upon the questions of Imperial disallowance of Dominion Acts, and the reservation, for Her Majesty's pleasure, of Bills passed by the Senate and House of Commons of Canada.

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31 Victoria, 1867.

AN ACT TO FIX THE SALARY OF THE GOVERNOR GENERAL.

*Reserved for Signification of Her Majesty's pleasure, 22nd May, 1868. Royal Assent withheld by Despatch, 30th July, 1868.*

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*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 30th July, 1868.

MY LORD,—I have the honour to acknowledge your despatch (No. 85) of the 23rd of May, transmitting a bill, passed by the Senate and House of Commons of Canada, "To fix the salary of the Governor General," which bill you have reserved for the signification of Her Majesty's pleasure.

I need scarcely say that it is with reluctance, and only on serious occasions, that the Queen's government can advise Her Majesty to withhold the royal sanction from a bill which has passed two branches of the Canadian Parliament. The present, however, is a measure which has important bearings, far beyond its first aspect as a mere reduction of expenditure.

The annual salary of the governor general was fixed at £10,000, so lately as last year, by the Imperial Act of Union,\* within the first few months of the existence of the new Parliament of Canada, it is proposed to reduce that salary to £6,500.

I fear that the effect of such a resolution, if assented to, must be prejudicial to the interests of Canada. The governor's salary for the colony of Victoria is £10,000 per annum;† there are several colonies in which it is £7,000; in Canada the amount contemplated by the bill is £6,500. Instead of being, as it ought to be, an object of the highest ambition, the office of the governor general is, by this proposal, placed, as far as salary is a standard of recognition, in the third class among colonial governments. The effect would be, not merely to restrict Her Majesty's ministers in the choice of governors general to those who may follow the career of colonial governors as a profession, but further to confine the choice, even amongst those, to gentlemen who are still rising and who would have to look to other places than Canada as offering the highest reward for approved abilities and success.

But the governor general is the representative of the Queen and the highest authority in a dominion, vast in extent, occupied by several millions of people, comprising within itself various provinces brought together, which can only be knit into a mature whole by wise and conciliatory administration. Nor is the position isolated. The governor general is continually called upon to act on questions affecting international relations with the United States. The person who discharges such exalted

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\* B. N. A. Act (Imp.) 30-31 Vic., cap. 3, sec. 105.

† The colony of Victoria in 1872 passed a bill for the reduction of the governor's salary. The bill was reserved and the royal assent refused.

functions ought to possess, not only sound judgment and wide experience, but also an established public reputation. He should be qualified both to exercise a moderating influence among the different provinces comprising the union, but also to bear weight in his relations with the British minister at Washington, and with the authorities of the great neighbouring republic.

I feel sure that the Queen's advisers in this country would at all times wish to obtain for Canada a governor general so qualified, but they could not invite his services if the income of his office is insufficient to meet the demands on his resources, and to uphold in a becoming manner the dignity of the Queen's representative in Canada.

For these reasons Her Majesty's Government have felt it their duty to advise Her Majesty not to pass into law, by giving the royal assent, the bill reserved for Her Majesty's pleasure for the reduction of the governor general's salary.

I have, &c.,

BUCKINGHAM AND CHANDOS.

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### 31 Victoria (1867) Chap. 94.

AN ACT RESPECTING THE TREATY BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA FOR THE APPREHENSION AND SURRENDER OF CERTAIN OFFENDERS.

*Reserved for Her Majesty's pleasure, 22nd May, 1868. Royal assent given 19th June, Proclamation dated 8th August, 1868.*

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### 32 & 33 Victoria (1869) Chap. 23.

AN ACT RESPECTING PERJURY.

*Extract from despatch of the Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 17th December, 1869.

SIR,—I have the honour to inform you that Her Majesty will not be advised to exercise her power of disallowance with respect to the following Acts of the Legislature of Canada, transcripts of which accompanied your despatch of 15th November, viz., 32 & 33 Vic., chaps. 2-73 (here follows list).

I observe that the 3rd section of chap. 23 "An Act respecting Perjury," assumes to affix criminal character to acts committed beyond the limits of the Dominion of Canada. As such a provision is beyond the legislative power of the Canadian Parliament, I request that you will bring this point to the notice of your government, with a view to the amendment of the Act in the above particular.\*

I am, &c.,

GRANVILLE.

\*Amended by 33 Vic., cap. 26, "An Act to amend the Act respecting Perjury."



## 32 &amp; 33 Victoria (1869) Chap. 74.

AN ACT RESPECTING THE SALARY OF THE GOVERNOR GENERAL.

*Reserved for Her Majesty's pleasure, 22nd June, 1869. Royal assent given 7th August, 1869. Proclamation dated 16th October, 1869.*

See ante, page 6.

## 32 &amp; 33 Victoria (1869) Chap. 3.

AN ACT FOR THE TEMPORARY GOVERNMENT OF RUPERT'S LAND AND THE NORTH-WESTERN TERRITORY WHEN UNITED WITH CANADA.

*and*

## 33 Victoria (1870) Chap. 3.

AN ACT TO AMEND AND CONTINUE THE ACT 32 AND 33 VICTORIA CHAPTER 3, AND TO ESTABLISH AND PROVIDE FOR THE GOVERNMENT OF MANITOBA.

*The Governor General to the Secretary of State for the Colonies.*

OTTAWA, 3<sup>rd</sup> January, 1871.

MY LORD,—I have the honour to inclose for your Lordship's consideration, and for such action as you may deem expedient, a minute of the Privy Council of the Dominion, approving of a report made by the Hon. the Minister of Justice, in reference to a question raised while the Act 33 Victoria, cap. 3, providing for the establishment and government of the province of Manitoba, was under discussion in the last session of the Canadian Parliament.

2. The report of the Minister of Justice recommends that a measure be submitted to the Imperial Parliament at its next session for the purpose of quieting the doubt started, which may otherwise cause grave disquiet in the territories, which have been added to, or may hereafter be added to the Dominion, and also for preventing the necessity of repeated applications to the Imperial Parliament for legislation respecting the Dominion.

3. This measure should, it is proposed,

1st. Confirm the Act of the Canadian Parliament, 33 Vic., cap. 3, above referred to, as if it had been an imperial statute, and legalize whatever may have been done under it according to its true interests.

2nd. Empower the Dominion Parliament from time to time : (a) To establish other provinces in the North-west Territory, with suitable constitutions and governments, possessing powers not greater than those conferred on the local governments by the British North America Act, 1867; (b) To admit representatives from such provinces into the

Parliament of the Dominion; (c) To increase or diminish the limits of the province of Manitoba, or any other provinces, with the consent of the local government of such provinces.

4. The "terms of the measure recommended to be applicable to the province of "British Columbia whenever it may form part of the Dominion."

I have, &c.,

LISGAR.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 2nd January, 1871.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th December, 1870.

The undersigned has the honour to report to your Excellency, that, during the last session of the Canadian Parliament, while the Act 33 Vic., cap. 3, providing for the establishment and government of the province of Manitoba, was under consideration, the question was raised as to the power of Parliament to pass the Act, and especially those of its provisions which gave the right to the province to have representation in the Senate and House of Commons of the Dominion. The "British North America Act, 1867," provides that

"The Queen in Council, on address from the Houses of Parliament of Canada, may "admit Rupert's Land and the North-western Territory, or either of them into the union, "on such terms and conditions as are in the address expressed, and as the Queen thinks "fit to approve, *subject to the provisions of this Act*, and any Order in Council in that "behalf shall have effect as if it had been enacted by the Parliament of the United "Kingdom."

The address which was passed by the Parliament of Canada, contained no provisions with respect to the future government of the country, the only terms and conditions contained in it being those agreed upon between the Hudson Bay Company and Canada as the conditions of their surrender of their charter to Her Majesty. Even if the terms of the address had included a new condition for the North-west, it must, under the above cited section, have been subject to the provisions of the Imperial Act of Union.

The Rupert's Land Act, 1868, passed by the Imperial Parliament, provides (section 5) for the admission of Rupert's Land (but not of the North-western Territory) into the Dominion of Canada, and that "thereupon, it shall be lawful for the Parliament "of Canada from the date aforesaid, to make, ordain, and establish within the land and "territory, so admitted as aforesaid, all such laws, institutions and ordinances, and to "constitute such a court and officers as may be necessary for the peace, order and good "government of Her Majesty's subjects and others therein."

This provision of the Act may fairly be held to have authorized the Canadian Parliament to pass the Act, giving the constitution to a portion of Rupert's Land: but still the question remains whether under the two Imperial Acts referred to, it had the power to give the people of the new provinces, representation in the Senate and House of Commons of Canada.

The general purview of "The British North America Act, 1867," seems to be confined to the three provinces of Canada, Nova Scotia and New Brunswick, originally forming the Dominion.

In the constitution of the Senate, the Dominion was divided into three divisions, each division having equal representation in that body. It fixes the normal number of the Senate at seventy-two, subject to the provisions of the Act: and the 28th clause provides that the number of senators shall not at any time exceed seventy-eight; the 147th clause, however, enacting that in case of admission of Newfoundland and Prince Edward island, the normal number of senators shall be seventy-six, and the maximum eighty-two.

In like manner the clauses of this Act relating to the constitution of the House of Commons, gives a certain proportionable representation to the provinces originally con-

stituting the Dominion, and makes no reference to the increase of numbers, for any addition to the territory of the Dominion.

There is in the Act no provision whatever for the representation in the Senate or House of Commons, of Rupert's Land or the North-western Territory, or British Columbia.

Under these circumstances, as the question as to the constitutionality of the Act of the Canadian Parliament has been raised, and as the doubt may cause grave disquiet in the territories which have been or may hereafter be added to the Dominion; and in order also to prevent the necessity of repeated applications to the Imperial Parliament for legislation respecting the Dominion, the undersigned has the honour to recommend that the Earl of Kimberley be moved to submit to the Imperial Parliament, at its next session a measure:

1. Confirming the Act of the Canadian Parliament, 33 Vic. cap. 3, above referred to, as if it had been an imperial statute, and legalizing whatever may have been done under it, according to its true interests.

2. Empowering the Dominion Parliament from time time to time to establish other provinces in the North-western Territory, with such local government, legislature and constitution as it may think proper, provided that no such local government or legislature shall have greater powers than those conferred on the local governments and legislatures by "The British North America Act, 1867," and also empowering it to grant such provinces representation in the Parliament of the Dominion: the Acts so constituting such provinces to have the same effect as if passed by the Imperial Parliament at the time of the union.

3. Empowering the Dominion Parliament to increase or diminish from time to time the limits of the province of Manitoba, or of any other provinces of the Dominion, with the consent of the government and legislature of such provinces.

4. Providing that the terms of the suggested Act be applicable to the Province of British Columbia whenever it may form part of the Dominion.

All of which is respectfully submitted.

JOHN A. MACDONALD,

*Minister of Justice.*

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 26th January, 1871.

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's despatch No. 1, of the 3rd January, inclosing a minute of the Privy Council, approving a report made by the Minister of Justice, and recommending amongst other things, imperial legislation to remove doubt respecting the validity of the Act of the Canadian Legislature, 33 Vic., cap. 3, and to empower the Canadian Parliament to establish new provinces in the Dominion.

In compliance with the wish of your government, I have caused a bill to be prepared of which I annex a copy\* and on learning that its provisions meet their views, I shall be prepared to introduce it into the Imperial Parliament during the coming session.

I request that you will inform me on this point at your early convenience.

With respect to the 5th section of the bill, I may refer you to the Imperial Act 31 and 32 Vic., cap. 92, which was passed to enable the legislature of New Zealand to withdraw part of the territory from a province, and to form such part into a county.

I have, etc.,

KIMBERLEY.

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\* Imperial Act 34 and 35 Vic., cap. 28.



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*Report of the Hon. the Acting Minister of Justice, approved by His Excellency the Governor General in Council on the 29th February, 1871.*

DEPARTMENT OF JUSTICE, OTTAWA, February, 1871.

The undersigned, acting in the absence of the Hon. the Minister of Justice, to whom was referred the despatch from the Right Honourable the Secretary of State for the Colonies, under date the 26th January, 1871, has the honour to submit a draft of a bill, which he recommends may be transmitted by your Excellency to the Earl of Kimberley, for adoption by the Imperial Parliament, as containing all the provisions which, in the opinion of the undersigned, are necessary to remove doubts respecting the powers of the Parliament of Canada to establish provinces in territories admitted, or which may hereafter be admitted into the Dominion.

The undersigned has to observe that it is absolutely necessary that the province of Manitoba, as well as any which may hereafter be erected, should hold the same status as the four provinces now composing the Dominion,—and British Columbia, when it comes in,—and, like them, should hold its constitution, subject only to alteration by the Imperial Legislature.

GEO. ET. CARTIER,

*Acting Minister of Justice.*

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### 35 Victoria (1872).

#### AN ACT TO AMEND THE ACT RESPECTING COPYRIGHTS.

*Reserved for Her Majesty's pleasure, 14th June, 1872; Royal Assent withheld by Despatch, 15th June, 1874.*

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*The Governor General to the Earl of Carnarvon.*

GOVERNMENT HOUSE, OTTAWA, 16th May, 1874.

MY LORD,—I have the honour to transmit herewith for your Lordship's consideration, attested copies of resolutions adopted by the Senate and House of Commons of Canada, respectfully urging the assent of Her Majesty's Government to a bill entitled "An Act to amend the Act respecting Copyrights," passed in the session of 1872, and reserved by Lord Lisgar for the signification of Her Majesty's pleasure. If not assented to within two years, the Act will expire on the 14th of next month.

I communicated to your Lordship to-day by telegraphic message the substance of these resolutions.

\* \* \* \* \*

I have, &c.,

DUFFERIN.

*Copy of Resolution of Senate and House of Commons.*

That an humble address be presented to His Excellency the Governor General, praying that His Excellency will be pleased to convey to Her Majesty's Principal Secretary of State for the Colonies, the respectful expression of the anxiety of this House that a bill, entitled "An Act to amend the Act respecting Copyrights," passed in the session of 1872, and reserved on the 14th June in that year, for the signification of Her Majesty's pleasure thereon, should not be allowed to lapse, by the expiry of the two years' limitation specified in the 57th section of "The British North America Act, 1867," and further to assure His Excellency that important interests in this Dominion, are prejudiced by absence of legislation such as this bill contemplates.

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 15th June, 1874.

MY LORD,—I have to acknowledge the receipt of your despatch of the 16th ultimo, transmitting for my consideration attested copies of resolutions of the Parliament of Canada, urging that Her Majesty's assent should be given to a bill entitled "An Act to amend the Act respecting Copyrights," passed in the session of 1872, and reserved by Lord Lisgar.

2. You will have learned by my telegram of the 11th instant, that I have felt myself unable to advise Her Majesty to assent to this bill, and I now proceed to state shortly to you the ground upon which I have reluctantly, though without any doubt, been compelled, after taking the advice of the law officers of the crown, to tender this advice to Her Majesty.

3. The Imperial Copyright Act, 5 and 6 Victoria, cap. 45, is, as you are aware, still in force in its integrity throughout the British dominions, in so far as it prohibits the *printing*, in any part of such dominions, of a book in which there is subsisting copyright under that Act, without the assent of the owner of the copyright, although the provision in that Act which prohibits the *importation* of foreign reprints of British copyright works, has been modified by the subsequent Act, 10 and 11 Victoria, cap. 95.

4. There is a recital in the Canadian bill which, by "The British North America Act, 1867," express power is given to the Parliament of Canada to legislate upon the subject of copyright, but it is to be observed that the section (the 91st) containing this provision, is one of several having reference (under the 6th general head of the Act) to "the distribution of legislative power," and provides that "copyrights," amongst other subjects (under section 92) are to be exclusively dealt with by the provincial legislature.

5. The effect of the Imperial Act is to enable the Parliament of Canada to deal with colonial copyrights within the Dominion, but it is clear that it was not contemplated to interfere with the rights secured to authors by the Imperial Acts of 5 and 6 Victoria, cap. 45, or to override the provisions of that Act.

Upon this point I am supported not only by the opinion of the present law officers of the crown, but by the opinion of those eminent lawyers, the present Lord Selborne, and Mr. Herschell, Q.C., whose reports will be found in the copyright paper presented to Parliament in 1872.

7. I may further observe, if confirmation of this view were needed, that the report of the Committee of your Privy Council of the 6th June, 1872, inclosed in your despatch, No. 159 of the 7th June, admits that the provisions of the Canadian bill are in conflict with imperial legislation.

8. In these circumstances I have had no alternative but to advise Her Majesty that her assent could not properly be given to the Canadian bill, and I may add that the validity of this bill would not have been established even if Her Majesty had been pleased to assent to it, inasmuch as by the 2nd section of the "Colonial Laws Validity Act" (28 & 29 Vic., cap. 63) any part of a colonial law, which is repugnant to an Imperial Act, extending to the colony in which such law is passed, is *pro tanto* absolutely void and inoperative.

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9. I am aware that the subject of colonial copyrights has long been under consideration, and that attempts were made by Her Majesty's late government, in communication with yourself and your ministers, to arrive at a settlement of this difficult, but most important question. I will now only express my readiness to co-operate, and my confident hope that we may without difficulty, be able to agree in the provisions of a measure, which, while preserving the rights of the owners of copyright works in this country under the Imperial Act, will give effect to the views of the Canadian Government and Parliament.

I have, &c.,

CARNARVON.

NOTE.—See post page 30.

### 36 Victoria (1873) Chap. 1.

AN ACT TO PROVIDE FOR THE EXAMINATION OF WITNESSES ON OATH BY COMMITTEES OF THE SENATE AND HOUSE OF COMMONS, IN CERTAIN CASES.

*Assented to by Governor General, 3rd May, 1873. Disallowed by Her Majesty. Proclamation dated 1st July, 1873.*

*Report of the Hon. the Minister of Justice.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th April, 1873.

The undersigned, to whom has been referred, by your Excellency, the bill passed during the present session, by the Senate and House of Commons, intituled "An Act to provide for the examination of witnesses on oath by committees of the Senate and House of Commons, in certain cases," begs leave to report:—

That by the 18th clause of "The British North America Act, 1867," it is provided as follows:—

"The privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof."

2. That subsequently on the 22nd May, 1868, the Canadian Parliament, by the Act 31 Victoria, cap. 32, in pursuance of the authority so given by the Union Act, defined the privileges of the Senate and House of Commons respectively. The clause doing so is as follows:—

"The Senate and the House of Commons respectively, and the members thereof respectively, shall hold, enjoy and exercise such and the like privileges, immunities and powers as, at the passing of "The British North America Act, 1867," were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof, so far as the same are consistent with, and not repugnant to, the said Act."

At this time neither the British House of Commons, nor any committee thereof, had power of examining witnesses on oath, except in certain specified cases, such as in private bills. That power was only conferred upon the British House of Commons and the committees in 1871, by the Act 34 and 35 Vic., chap. 83.

The bill now referred to the undersigned seeks to confer this power upon any committee of the Senate or House of Commons, when either House shall have resolved that it is desirable that witnesses should be examined upon oath. The empowering section of the bill is as follows:—

“Whenever any witness or witnesses is or are to be examined by any committee of the Senate or House of Commons, and the Senate or House of Commons shall have resolved that it is desirable that such witness or witnesses shall be examined upon oath, such witness or witnesses shall be examined upon oath or affirmation, where affirmation is allowed by law.”

The question has been raised whether it is competent for the Parliament of Canada to confer this power on a committee of the Senate or House of Commons here, as it is a power which was not possessed or exercised by the British House of Commons at the time of the passing of “The British North America Act, 1867.”

The undersigned has come to the conclusion, although not without doubt, that this bill is not within the competency or jurisdiction of the Canadian Parliament, and that the attention of Her Majesty’s Government should be called to its provisions, and to the doubt that exists with respect to its validity.

All of which is respectfully submitted.

JOHN A. MACDONALD,

*Minister of Justice.*

*The Governor General to the Secretary of State for the Colonies.*

GOVERNMENT HOUSE, OTTAWA, CANADA, 3rd May, 1873.

MY LORD,—I have the honour to forward to your Lordship, a certified copy of a bill entitled, “A Bill to provide for the examination of Witnesses on oath, by Committees of the Senate and House of Commons in certain cases,” which has passed both Houses of the Canadian Parliament, and to which I have this day given my assent.

The introduction of this bill into the House of Commons arose out of the following circumstances.

On the 2nd of April the Hon. Lucius Seth Huntingdon, member for Shefford, in the province of Quebec, made the following motion:

Hon. Mr. Huntingdon moved that Mr. Huntingdon a member of this House, having stated in his place that he is credibly informed and believes that he can establish by satisfactory evidence—

“That in anticipation of the legislation of last session, as to the Pacific Railway, an agreement was made between Sir Hugh Allan, acting for himself, and certain other Canadian promoters, and G. W. McMullen, acting for certain United States capitalists, whereby the latter agreed to furnish all the funds necessary for the construction of the contemplated railway, and to give the former a certain percentage of interest, in consideration of their interest and position, the scheme agreed on being ostensibly that of a Canadian company with Sir Hugh Allan at its head.

“That the Government were aware that negotiations were pending between these parties.

“That subsequently an understanding was come to between the Government and Sir Hugh Allan and Mr. Abbott M.P., that Sir Hugh Allan and his friends should advance a large sum of money for the purpose of aiding the elections of ministers and their supporters at the ensuing general elections, and that he and his friends should receive the contract for the construction of the railway.

“That accordingly Sir Hugh Allan did advance a large sum of money for the purpose mentioned, and at the solicitation, and under the pressing instances of ministers.

"That part of the moneys expended by Sir Hugh Allan in connection with the obtaining of the Act of incorporation and charter, were paid to him by the said United States capitalists under the agreement with him : It is

*Ordered* that a committee of seven members be appointed to inquire into all the circumstances connected with the negotiations for the construction of the Pacific Railway, with the legislation of last session on the subject, and with the granting of the charter to Sir Hugh Allan and others, with power to send for persons, papers and records ; and instructions to report in full the evidence taken before, and all proceedings of said committee " ; which was negatived on the following division :— Yeas, 76, Nays, 107.

As your Lordship will perceive, this motion charges my present advisers with a very infamous proceeding, with no less a crime than that having sold Canada's most precious interests to certain American speculators, with a view to debauching the Canadian constituencies with the gold obtained as the price of their treachery.

In making his motion Mr. Huntingdon did not accompany it by any statement as to the grounds on which he founded his charge, or by the production of any evidence in support of it ; and neither Sir John Macdonald nor any of his colleagues having risen to address the House a vote was forthwith taken without debate, which resulted in a majority of 31 in favour of the government, in a House of 183.

The next day Sir John Macdonald himself gave notice that he would move the appointment of a committee for the purpose of investigating Mr. Huntingdon's charges, and it being further suggested, as I am informed, by some of the Opposition members, that the evidence should be taken on oath, a bill for that purpose was introduced by the Hon. John Hillyard Cameron, an eminent lawyer of Ontario, and the chairman of the proposed committee.

This bill was accepted by the government, and passed with scarcely any discussion in the House of Commons.

It was introduced into the Senate by Mr. Campbell, the postmaster general, and gave rise to some difference of opinion as to whether its enactments were within the competence of the Canadian legislature.

In the 8th clause of the Union Act of Canada, it was provided that " the privileges, immunities and powers to be held, enjoyed and exercised by the Senate, and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof," and the critics of the measure observed that, inasmuch as the British House of Commons did not acquire the general right of examining witnesses on oath until a date subsequent to the passing of the Union Act, the Dominion Parliament was precluded by the terms of the foregoing clause from investing the Canadian House of Commons with the powers in question. It strikes me, however, that the 18th clause of the Union Act was not framed for the purpose of restricting the legislative action of the Dominion Parliament, but that the terms " immunities, privileges, &c.," refer to those immunities and privileges which are inherent in the British House of Commons as a separate branch of the legislature, and this view seems to be confirmed by the use of the word " defined."

The manifest purpose of the Act was to endow the Canadian House of Commons with a status analogous to that enjoyed by the House of Commons at home ; and for obvious reasons it was necessary that the attributes of this status should be distinctly specified in the manner provided for in the 18th clause, but it could scarcely have been intended to preclude either branch of the Canadian Legislature from acquiring, by Act of Parliament, such other powers as experience might prove to be necessary, providing these powers were constitutional in themselves, and did not infringe the prerogatives of the crown.

That this view was held by my predecessors as well as by the Imperial Government may be deduced from the following circumstances :—



The Canadian Senate is also endowed by the 18th clause of the Act of Union with the same privileges and attributes as the Imperial House of Commons, but these "privileges," &c., are confined by an identic formula within the same limit as those which restrict the powers of the Canadian House of Commons, and which are supposed to render the present "Oaths Bill" *ultra vires*, viz., to such as were possessed by the British House of Commons at the passing of the Act. Yet one of the first Acts of the Canadian Legislature was to invest the Canadian Senate with the general power of examining witnesses at the bar—a power which was not possessed by the British House of Commons until long after the passing of the Union Act.

It is possible that this Act may have been assented to by the Governor General, and acquiesced in by the Imperial Government through inadvertence, in which case it could not be appealed to as a precedent for sanctioning an obvious illegality, but there are no corroborating circumstances to justify me in acting on so unlikely an assumption.

Under these circumstances, I trust your Lordship will consider that I have done right in giving the assent of the crown to the Canadian "Oaths Bill."

Had I deferred doing so, very prejudicial results would have arisen. The investigation of a charge of the gravest nature, affecting the honour of my constitutional advisers would have appeared to be indefinitely postponed, while it was being loudly asserted and widely credited throughout the country, that the delay had been contrived at the instigation of Sir John Macdonald and his confederates, who were seeking by these devices to defer the exposure of their guilt.

But for this circumstance, I might have been tempted, as the point raised is a purely legal one, to have reserved the bill for your Lordships consideration, and the more so because, as you will perceive by the inclosed minute, Sir John Macdonald is inclined to share the misgivings of those who question the competency of the Canadian Parliament in this matter; but as the issue is one not of colonial, but of imperial concern, and as Sir John tendered his opinion merely for my information, and not as my adviser—indeed he intimated that he would be glad if I saw my way of assenting to the bill;—I felt at liberty to consult my own judgment, more especially as it may be presumed that my government would not have promoted the "Oaths Bill," in the House of Commons and fathered it in the Senate, had the Minister of Justice entertained a decided conviction of its illegality.

My conclusions have been further fortified, not only by the opinion of many legal authorities whom I have consulted, but more especially by that of Mr. Alpheus Todd, the author of "Parliamentary Government in England," who, as your Lordship is aware, is exceptionally qualified to pronounce upon questions of this description, and who has been good enough to discuss the case in a short memorandum, of which I inclose a copy.

I have, &c.,

DUFFERIN.

*Opinion of Mr. Alpheus Todd in reference to the meaning of the 18th Clause of "The British North America of 1867."*

This clause is as follows:—

"The privileges, immunities and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof, respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof."

A bill having been introduced into the Dominion House of Commons in the present session, intituled "An Act to provide for the examination of witnesses on oath by committees of the Senate and House of Commons in certain cases," a question has been raised as to whether the Dominion Parliament were competent to pass this bill in view of the restrictions imposed by the 18th clause of the British North America Act aforesaid.

In my opinion that clause was intended to restrain the claims of either House to indefinite privileges and immunities, by providing that such privileges shall never exceed those enjoyed by the Imperial House of Commons, at a given date. The privileges and immunities herein referred to, are those that might reasonably or unreasonably be claimed as inherent in, or necessarily attaching to the Houses of the Canadian Parliament, pursuant to the maxim that 'all things necessary pass as incident.' By limiting such privileges and powers to those possessed by the Imperial House of Commons in 1867, it presents, on the one hand, an undue encroachment or extension of privilege, and on the other hand secures to the two Houses, and the members thereof, respectively, the privileges, immunities and powers appropriate to them as component parts of the Canadian Parliament. V

It has been urged that the Act to authorize the examination of witnesses on oath by Committees of the Senate and House of Commons of Canada, is an extension of their privileges, beyond those sanctioned by "The British North America Act," inasmuch as select committees of the Imperial House of Commons (not being private bill committees) did not possess such power in 1867, or until, by the Imperial "Parliamentary Witness Oaths Act of 1871"; such power was for the first time conferred upon them.

It is to be observed, however, that the power so conferred upon committees by the English House of Commons was not claimed as a "privilege" inherent in that body. It was merely a power conferred by statute, to facilitate legislative inquiries, similar to that which has been repeatedly conferred upon statutory commissions; and being so conferred it did not trench upon any prerogative of the crown, or enlarge the constitutional rights of the House of Commons.

The Dominion Parliament were therefore clearly competent, in my judgment, to confer a similar power upon committees of the Senate and House of Commons, pursuant to the authority conveyed to that parliament by the 1st clause of "The British North America Act, 1867," to make laws for the peace, order and good government of Canada. V9

In a word the restrictions contained in the 18th clause of the aforesaid Act, are restrictions upon claims that might be urged on behalf of the two Houses of the Canadian Parliament, or the members thereof, respectively, *to inherent or excessive privileges*, and are not intended to prevent the exercise of *legislative powers* by the whole Parliament, provided that the same are exercised within appropriate constitutional limits.

ALPHEUS TODD.

Library of Parliament, 1st May, 1873.

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 30th June, 1873.

MY LORD,—I have the honour to transmit to you an Order in Council disallowing the Act passed by the Parliament of Canada, to provide for the examination of witnesses on oath by committees of the Senate of the House of Commons in certain cases, and also the certificate as required by the 56th section of the British North America Act, 1867, stating when the Act was received in this department.

Before tendering any advice to Her Majesty upon this Act, I referred to the law officers of the crown, and I was advised that the Act was *ultra vires* of the Colonial Legislature, as being contrary to the express terms of section 18 of "The British North America Act, 1867," and that the Canadian Parliament could not vest in themselves the power to administer oaths, that being a power which the House of Commons did not possess in 1867, when the Imperial Act was passed.

The law officers also reported that the Queen should be advised to disallow the Act.

My attention has been called to the fact that, by an Act of the Canadian Parliament, cap. 24 of 1868, provision is made by the first section for examining witnesses upon oath at the bar of the Senate, and that that Act has been allowed to remain in operation. It appears to have escaped observation both here and in the colony that

though such examination of witnesses is in accordance with the practice of the House of Lords, the powers of the Senate of Canada are limited by "The British North America Act, 1867," to such powers as were then enjoyed by the House of Commons, and that the first section of the Canadian Act of 1868, was therefore in contravention of that Act.

But though the Act of 1868 was not disallowed, I have to point out to you that under the 2nd section of 28 and 29 Victoria, cap. 63, this first section is void and inoperative, as being repugnant to the provisions of "The British North America Act," and cannot be legally acted upon.

So far as regards the powers given by the Act of 1868, to select committees upon private bills, they would appear to be unobjectionable, as like powers had, before the passing of the British North America Act, been given to the House of Commons by 21 and 22 Vic., cap. 78.

I have, &c.,

KIMBERLEY.

In 1875 the following correspondence took place with the Secretary of State for the Colonies, relating to the passing of an Imperial Act, having for its object the removal of all doubt as to the right of the Canadian Parliament to possess the power to pass an Act providing for the examination of witnesses on oath by committees of the Senate and House of Commons, and declaring as valid the Act of the Parliament of Canada, 31 Vic., cap. 24.

*The Governor General to the Earl of Carnarvon.*

OTTAWA, 24th February, 1875.

MY LORD,—I have the honour of submitting for your Lordship's consideration, a copy of an approved Order of the Privy Council, in which my government, on the advice of the Minister of Justice, recommend that Her Majesty's Government be invited to obtain, during the present session of the Imperial Parliament, the passage of an Act removing all doubt as to the right of the Parliament to possess the power to pass an Act providing for the examination of witnesses on oath by committees of the Senate and House of Commons. Although the point has not been touched upon by my Privy Council, I am anxious to draw your Lordship's attention to the fact that the same conditions which led the crown to disallow the "Oaths Bill" of the session of 1873, seem also applicable to the powers, which for sometime past, have been vested in the Senate under an Act of Canada of 1868 (36 Vic., cap. 24).

I have, etc.,

DUFFERIN.

*Copy of Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General on the 18th February, 1875.*

The Committee of the Privy Council have had under consideration a memorandum, dated 15th February 1875, from the Hon. the Minister of Justice, calling the attention of Council to the despatch of the Right Hon. the late Secretary of State for the Colonies dated 30th June, 1873, in which he mentioned that the imperial officers of the crown had advised that the Act passed by the Parliament of Canada in 1873, "To provide for the examination of witnesses on oath, by Committees of the Senate and House of Commons, in certain cases," was *ultra vires* of the Colonial Legislature, and that the Canadian Parliament could not vest in themselves, the power to administer oaths, that being a power which the House of Commons did not possess in 1867, when the Imperial Act was passed.



The despatch further states that, "by an Act of the Canadian Parliament of 1868, (cap. 24) provision was made by the first section for examining witnesses upon oath at the bar of the Senate, and that the Act had been allowed to remain in force," and pointing out that that section was void and inoperative, as being repugnant to the provision of the British North America Act, and cannot be legally acted upon.

The Minister of Justice reports that it is obvious that the Parliament of Canada should be enabled to examine witnesses on oath.

He therefore recommends that the attention of the Secretary of State for the Colonies be invited to the subject, with a view to moving Her Majesty's Government to obtain, during the present session of the Imperial Parliament, the passage of an Act removing all doubt as to the right of the Parliament of Canada to possess the power to pass an Act providing for the examination of witnesses on oath by Committees of the Senate and House of Commons.

The Committee concur in the foregoing recommendation and submit the same for your Excellency's approval.

W. A. HIMSWORTH,  
*Clerk Privy Council.*

*The Secretary of State for the Colonies to the Officer Administering the Government of Canada.*

DOWNING STREET, 11th June, 1875.

SIR,—Her Majesty's Government have had before them the Earl of Dufferin's despatch, No. 48, of the 24th February last, with an approved report of a Committee of the Privy Council which accompanied it, in which the Canadian Government recommend the passing of an Imperial Act removing all doubt as to the right of the Parliament of the Dominion to possess the power to pass an Act providing for the examination of witnesses on oath by committees of the Senate and House of Commons.

You will be so good as to inform your government that a bill to give effect to their wishes in this respect, and at the same time to validate the Act of the Canadian Parliament, cap. 24 of 31st Victoria, has passed the House of Lords.

The Act will be communicated to you as soon as it has received Her Majesty's assent.

I have, &c.,

CARNARVON.

NOTE.—The Imperial Act in question (38 & 39 Vic., cap. 33), was communicated to the Administrator by despatch of the 22nd July, 1875. In 1876 the Oaths Bill was re-enacted. See 39 Vic. (Canada cap. 7, also 57-58 Vic. (1894) cap. 16. See also New South Wales Act, 45 Vic., cap. 5.

## 36 Victoria (1873) Chap. 128.

AN ACT RELATING TO SHIPPING, AND FOR THE REGISTRATION, INSPECTION AND CLASSIFICATION THEREOF.

*Reserved for Her Majesty's pleasure, 23rd May, 1873. Royal assent given, 20th November, 1873. Proclamation dated, 16th March, 1874. In force on and from 17th March, 1874.*

## 36 Victoria (1873) Chap. 129.

## AN ACT RESPECTING THE SHIPPING OF SEAMEN.

*Reserved for Her Majesty's pleasure, 23rd May, 1873. Royal assent given, 20th November, 1873. Proclamation dated 16th March, 1874. In force on and from 27th March, 1874.*

## 37 Victoria (1874) Chap. —.

## AN ACT TO REGULATE THE CONSTRUCTION AND MAINTENANCE OF MARINE ELECTRIC TELEGRAPHS.

NOTE.—No action having been taken with respect to this reserved bill—the Act, 38 Victoria (1875) chapter 26, intituled “An Act to regulate the construction and maintenance of Marine Electric Telegraphs,” was subsequently passed.

*Reserved for Her Majesty's pleasure, 4th June, 1874.*

*The Governor General to the Secretary of State for the Colonies.*

OTTAWA, 4th June, 1874.

MY LORD,—I have the honour to inclose a copy of a bill which I have thought it advisable to reserve for your Lordship's approbation.

Accompanying the bill is an Order in Council explaining its provisions, and insisting, with very great force, on the desirability of the object it is intended to effect.

My government attach the very greatest importance to the measure, and have requested me to urge their views upon your Lordship in the strongest possible language.

I have, &c.,

DUFFERIN.

*Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General on the 4th June, 1874.*

The Committee of the Privy Council have the honour to report :—

That at the last session of the Parliament of Canada, a bill was passed by both Houses entitled “An Act to regulate the construction and maintenance of Marine Electric Telegraphs,” which, in accordance with paragraph seven of the royal instructions, was, upon the advice of the Minister of Justice, reserved by His Excellency the Governor General for the signification of Her Majesty's pleasure; and that the Minister of Justice thus advised, as the bill “is one of some importance, and may possibly be “considered to prejudice the interests and rights of property of Her Majesty's subjects “not residing in Canada.”



That the Anglo-American Telegraph Company appeared by council before the committee of the Senate to which the bill was referred, and urged that their rights and privileges would be prejudiced by it, but that the committee reported in favour of the bill, and the same was then passed by that body.

That the advice to the Governor General that the bill should be reserved, was given merely in deference to the language of the royal instructions, and not from any conviction or belief that the bill in any way interferes with, or is prejudicial to, the rights of the Anglo-American Telegraph Company, or any other company with similar objects, or with similar rights.

That the bill in question is calculated to afford facilities to any persons seeking incorporation for the purposes of marine telegraphs, and will tend to promote, not the establishment (or monopoly) of one company only, but of several, for the same purposes.

Whilst, as regards any supposed rights or franchises of the Anglo-American Company, or any other company with which this bill can be alleged to interfere, the committee are quite at a loss to know in what they can be said or supposed to exist, or what peculiar rights of any kind that company or any other can at present claim in Canada.

The fourteenth section prohibits any company, except such as have been or may be incorporated in Canada, from maintaining or constructing a marine telegraph (saving the user of any existing telegraph company, during the non-existence of any company arising within the provisions of the bill). But the fifteenth section provides that "the necessary corporate powers in Canada (for any company so "prohibited by the fourteenth section,") may be procured from the Governor in Council; upon condition, however, that other companies created under the authority of the reserved bill, shall have conceded them, and enjoy equally with it, any advantages or privileges which it may possess.

In these provisions, therefore, will be found the object of the Act: the encouragement of marine telegraph companies in Canada; but so, as that all companies, whether of Imperial or Canadian incorporation, shall enjoy equal rights and privileges in all respects amongst themselves, and without any special monopoly.

That is to say, Parliament is willing to extend to companies of imperial or parliamentary origin in Great Britain, the same corporate powers which it is proposed shall exist in any companies of Canadian incorporation, provided that equal rights and privileges in all respects are enjoyed by all.

The committee are of opinion that no company is in existence, possessing rights and privileges in Canada, which can in any way be legally affected by the reserved bill.

They, at the same time, desire to express their strong conviction that this measure is calculated to be highly beneficial to the interests of Canada, and is also in accordance with the established policy of the country, and they submit that Her Majesty's Secretary of State for the Colonies be requested to pray Her Majesty's sanction to the bill at an early date.

W. A. HIMSWORTH,

*Clerk Privy Council.*

*The Governor General to the Secretary of State for the Colonies.*

OTTAWA, CANADA, 2nd October, 1874.

MY LORD,—I have the honour to forward, for your Lordship's information, copy of an Order in Council dated the 2nd October, 1874, in reference to the recent Telegraph Act of the Dominion Legislature, which has been reserved for your Lordship's consideration.

The Order in Council is accompanied by a copy of the "Money Market Review," and a pamphlet of the Anglo-American Telegraph Company, and by a copy of an Order in Council of the 4th June, 1874, relative to the same subject.

These documents have only reached me as the mail was upon the point of closing, and I have not had time to do more than glance at the principal document. I forward it, however, being unwilling to delay its arrival in your Lordship's hands.

I have, &c.,

DUFFERIN.

*Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General on the 2nd October, 1874.*

The Committee of Council, having reference to an Order in Council of the 4th June last, of the reserved "Marine Electric Telegraph Company's Bill," have the honour further to report:—

That a telegram to the following effect from the Honourable the Secretary of State for the Colonies, was submitted by your Excellency:—

"Before a decision is given as to the Marine Electric Telegraph Act, Her Majesty's Government desire to know whether effect of concession of exclusive rights of Anglo-Saxon American Company, confirmed so lately as 1869 by Prince Edward Island Act, has been duly considered, and whether that company would claim compensation for its withdrawal, also whether interests of proprietors were fully considered before the bill was passed.

"CARNARVON."

To which the following reply was sent:—

"I am advised that the charter given by Prince Edward Island was not urged upon the committee in Parliament (when considering the Telegraph Bill), nor was it brought before the government. It is difficult to ascertain what privileges the concessions of exclusive rights to 'New York, Newfoundland, and London' telegraph companies originally embraced. It is doubtful whether any such privileges now exist, as the company is now apparently merged in another company without legislative sanction of Prince Edward Island, Canada. Despatch will be sent giving further particulars.

"DUFFERIN."

That some delay has necessarily arisen in the further consideration of the subject of the above telegram to your Excellency, in order that the Privy Council for Canada might obtain full information thereupon.

That after full inquiry the committee find as follows:—

See Statutes  
P. E. Island.  
17 Vic., c. 64, 1854  
20 Vic., c. 13, 1857  
25 Vic., c. 9, 1862  
32 Vic., c. 34, 1869  
Act, 1854, sec. 2.

1. That any exclusive concession in Prince Edward Island by Acts of its legislature, was in favour of "The New York, Newfoundland and London Telegraph Company," a Newfoundland corporation, and it was expressly limited "during its existence."

2. That the Newfoundland company did not in fact avail itself of the exclusive provisions of the Act of 1854, or construct any cable on the faith of this protection.

3. That another company had previous to the passing of that Act, laid down a cable from the island to New Brunswick, and this by section 8, was vested in the Newfoundland company.

4. That the committee are informed that the service was, and continued to be, so inefficiently performed, as to give rise to the conditional revocation of the company's powers by the Act of 1862.



5. That the Newfoundland company were to receive an annual subsidy from the province for maintaining this line; it would therefore appear to have been constructed for the local convenience of the island, and not with reference to any cable line in contemplation by the company, to which the prohibitory provisions of the Act of 1854 might have attached.

6. That moreover, by sec. 6 of the Act of 1869, the right would appear to be reserved to the executive government to dispense with these services, and to make arrangements with any other company for this connection.

7. That in May, 1873, the Newfoundland company became merged in the Anglo-American company (a corporation under the Imperial Joint Stock Companies Act), and the intention and effect of such merger was to put an end to the existence of the Newfoundland company as a corporation. *Note (b)*—See proceedings at "General Meeting of the Anglo-American company, May 22nd, 1873;" also, *Société du câble trans-atlantique, May 22nd, 1873. Also, terms of resolution adopted at these meetings, reported in the "Money Market Review," May 24th, 1873, (herewith); also, pamphlet of company, p. 46.*

8. That an Act of the legislature of Newfoundland had been passed which authorized such consolidation being entered into, and the transference of the rights of the Newfoundland company to the Anglo-American company, but no such legislation was sought or obtained in the province of Prince Edward Island.

See reference  
to this Act at  
General Meeting  
above.

9. That the committee believe that by the terms of amalgamation the Anglo-American company retained part of the consideration (£135,000) going to the proprietors of the Newfoundland company against the pre-emption claim of the province of Newfoundland, but that there was no similar provision as to Prince Edward Island.

10. That the concession in the latter province would appear not to have been deemed of any importance to the contracting companies, or to have formed an element of value in the consideration.

11. That at the same time that negotiations for this amalgamation were proceeding between the telegraph companies in May, 1873, terms of union between the province of Prince Edward Island and the Dominion were being discussed, and neither government could have considered that the island was in any way subject to any exclusive concession in favour of any telegraphic company, for it was an absolute obligation imposed on the Dominion that it should maintain telegraphic communication between the island and the mainland of the Dominion, as well as an efficient steam service for mails and passengers.

See Order in  
Council, Court at  
Windsor, 26th June,  
1873 approving  
of Union and  
schedule of terms  
annexed, Statutes  
of Canada, p. XII.

12. The Parliament of Canada during the last session passed a private Act, introduced after the duly published preliminary notices, whereby the Dominion Telegraph company was authorized to extend its limits by cable into Prince Edward Island.

Statutes, Canada,  
37 Vic., c. 82.

It would therefore appear to be very questionable whether under these circumstances, the Newfoundland company having ceased to exist, any monopoly or concession it might have been possessed of is not also at an end, quite independently of the fact that no transfer of any such exclusive privilege or concession was made or could be made without the sanction of the Prince Edward Island legislature.

It may further be observed that, as far as the committee can ascertain, this concession does not appear to have formed any part of consideration for the purchase by the Anglo-American company, and that as the Dominion has itself assumed the obligation of maintaining telegraphic communication between the island and the mainland there was nothing which the Anglo-American company could have urged before the legislature (if it had thought fit to do so), based on any circumstances connected with Prince Edward Island, which could have availed to defeat the Marine Telegraph Bill, or to form the subject of compensation.

There can be no doubt but that the Parliament of Canada fully considered the effect of this bill, and that although it was urged on behalf of the Anglo-American company that the interests of proprietors would be seriously effected if the company

was obliged to give up its occupation for cable purposes of the shores of Canada, which by the provisions of the bill it can only retain by consenting to give equivalent privileges to any other company in Newfoundland, the Parliament of Canada considered this occupation to be only on sufferance, and determinable at will.

That such occupation appears to have been taken and used without any authority (which would constitute it a right), but that such occupation can only be lawful and continue by compliance with the terms of the Act, and the condition that the company yield the like privilege to any other corporation in Newfoundland.

That no franchise in favour of the Anglo-American company existed in any part of Canada, and that the company could not lawfully assume to exercise any such, except with the sanction of the Parliament of Canada.

That it is obvious that Parliament could not recognize the position claimed by the Anglo-American company, inasmuch as by so doing it would admit by virtue of an Act of Newfoundland, the company had gained and could retain in Canada without the sanction of its supreme authority, privileges in the nature of a monopoly.

In conclusion, the committee desire to call attention to the fact, that while the bill is plainly within the powers and jurisdiction of the Parliament of Canada, the original grant by Newfoundland was declared contrary to Imperial policy. (See despatch 18th January, 1858.)

The committee submit that it would be in direct conflict with the spirit of the above despatch, now to interfere with the Parliament of Canada in the exercise of its constitutional right, to declare on what conditions alien corporations should be permitted to make use of any portion of its territory.

W. A. HIMSWORTH,

*Clerk Privy Council.*

*The Hon. J. J. C. Abbott, Q.C., to the Hon. the Secretary of State of Canada,*

MONTREAL, 13th October, 1874.

SIR,—I have the honour to transnit to you the inclosed petition of the Anglo-American Telegraph Company, praying that no further steps be taken for the sanctioning of the Act respecting Electric Telegraphs passed during the last session of Parliament.

I have, &c.,

J. J. C. ABBOTT.

*To the Right Honourable the Earl of Dufferin, K.P., K.C.B., Governor General of Canada  
in Council.*

The humble petition of The Anglo-American Telegraph Company, Limited,—  
SHOWETH,

That your petitioners are a corporation formed under the Act of the Imperial Legislature, entitled the "Companies Act, 1862," with a present capital stock of £7,000,000 (seven million pounds) sterling, which is held by between five thousand and six thousand stockholders mostly resident in Great Britain.

That your petitioners were established in 1866 for the purpose of effecting telegraphic communication between Great Britain and the American continent, and under various agreements and arrangements made at and subsequent to the date of their incorporation, and which have been sanctioned by the Imperial Parliament, your petitioners are now the representatives of the Atlantic Telegraph Company, and possess all the property, rights and privileges of that company, and by other agreements and arrangements made in the year 1873 your petitioners are now also the proprietors of the



cable and property of the Société du Cable Transatlantique Français, Limited, and also of the cables, lines and other telegraphic property and rights of the New York, Newfoundland and London Telegraph Company.

That the last mentioned company has been and is now consolidated with your petitioners by virtue of the provisions of Acts of the Legislature of Newfoundland, and agreements made thereunder.

That the shareholders of all the said three companies, whose properties and rights are now held by your petitioners received shares of stock in your petitioners' capital as the purchase money for their respective properties and rights, so that your petitioners as now constituted comprise either the original holders of the share capitals of the said three companies or their direct representatives.

That your petitioners, by themselves or their said predecessors, have for upwards of twenty years laboured to establish telegraphic communication between Great Britain and America, and through great difficulties, and after many failures and heavy losses of capital, they succeeded in the year 1866 in laying two submarine cables between Ireland and Newfoundland, and by means of such cables and local lines, either belonging to them or connected with their cables, they for the first time established effective telegraphic communication between the eastern and western hemispheres.

That your petitioners have since 1866, at great cost, laid two other submarine cables between Ireland and Newfoundland, and a line from France to St. Pierre (Miquelon) and Duckbury (Massachusetts), and except for a few days when the lines have been injured by storms, they have, from 1866 to the present time, maintained such telegraphic communication as aforesaid, and have, as they believe, carried on their business to the satisfaction of all parties interested therein.

That your petitioners have from time to time reduced the rates of telegraphic messages between England and America from £20 for twenty words to the present rate of 4s. per word; and they have so far perfected their connections and methods of operating as to enable them under ordinary circumstances to transmit telegrams between London and Newfoundland in periods averaging eight minutes, and between London and New York twenty minutes.

That your petitioners possess numerous cables and land lines of telegraph in and between Newfoundland and Prince Edward island and Cape Breton, and between Newfoundland and St. Pierre (Miquelon), several of these lines having been laid or established by their predecessors, the New York, Newfoundland and London Telegraph Company, many years ago, and which have been in operation ever since for the transmission of Atlantic or local messages to and from Newfoundland and the Dominion of Canada or the United States of America.

That such local cables are of great importance to your petitioners, and without some such means of communication your petitioners' Atlantic cables would be practically useless.

That by a bill passed by the Parliament of Canada in May, 1874, entitled "An Act to regulate the construction and maintenance of Marine Electric Telegraphs," and hereinafter referred to as the Act of 1874, it is enacted, amongst other things, (section 1), That the said Act shall apply to every company thereafter authorized by any special or general Act of the Parliament of Canada or under the provisions of the Act of 1874, to construct or maintain telegraphic cables in or across any tidal water within the jurisdiction of Canada, so as to connect any province with any other province of the Dominion, or to extend beyond the limits of any province, and to every company authorized to construct or maintain such telegraphs before the passing of the Act of 1874 by any such special or general Act of the Parliament of Canada, or by any other special Act or charter of any of the provinces constituting the Dominion, and at the time of the passing of the Act of 1874 in force in Canada. (Section 14.) That no company other than those mentioned in the first section of the Act of 1874, or which becomes incorporated in Canada under the next following section, shall maintain, construct or use any telegraphic wire or cable connecting two or more provinces of the Dominion, or extending beyond the limits of any province, or upon, under, or across any gulf, bay or

branch of any sea or any tidal water within the jurisdiction of Canada, or the shore or bed thereof respectively : Provided that nothing in this section contained shall be construed to prohibit any existing telegraph company or association from continuing to receive and transmit messages over its line of marine telegraph until such time as another company, under the authority and within the provisions of this Act, has constructed and is operating a line of marine telegraph which has been determined by the Governor in Council to afford reasonable facilities for the transmission of marine telegraph messages in lieu of the line or lines of such existing telegraph company or association, or to be a line for doing business over a route of a competitive nature. (Section 15), authorizes certain companies therein mentioned to obtain a charter in Canada for the purpose of establishing and maintaining their telegraph and works within the jurisdiction of Canada, but it is expressly declared that no such charter shall be granted to any company "which possesses any exclusive privilege of landing wire or cable for a "marine telegraph in or upon the coast of any state, province or country in America, "Europe, or elsewhere, unless an equal or reciprocal right or privilege of landing wire "or cable and establishing a marine telegraph upon the same coast, is conceded to any "and each of the companies in the first section of this Act mentioned, or which may "become incorporated in Canada under the provisions of this section of this Act, so that "any company incorporated or to be incorporated in Canada may enjoy the same advantages in maintaining its marine telegraph line in and upon the same coast as the "said company which may possess such exclusive privilege."

That the object and intention and effect of the said Act of 1874 appears to be to prohibit (for the benefit of a competing company) the working and use of the local cables of your petitioners, which now extend to and are established upon the shores of the Dominion of Canada, and by means of which your petitioners' business is to a large extent carried on, unless they give up the exclusive right of laying telegraph cables to and upon the island of Newfoundland.

Your petitioners humbly submit to your Lordship that the above mentioned provisions of the Act of 1874 are unfair and inequitable, and would greatly prejudice and injure your petitioners, that the said Act ought not to be assented to by your Lordship on Her Majesty's behalf or allowed to become law, for, amongst others, the following reasons :—

1. Because the said Act injuriously affects your petitioners in their property and existing rights, and your petitioners had no notice, and no public notice was given of the intention to bring in the bill, or that any legislation was intended affecting your petitioners' interests.

2. Because your petitioners had no opportunity of petitioning Parliament against the said Act before it was passed, and had but a few days' notice (which was accidentally obtained by telegraph) that the bill was in progress, and therefore were unable to lay their case against the bill before either the House of Commons or the Senate.

3. Because, as your petitioners are informed, and as appears from the reports of the discussions on the said bill, its real object and effect were not fully represented or made known to the members of the Parliament, and that if its real object and effect had been understood, the bill would not have been passed in its present form ; but if passed at all, provision would have been inserted therein for the protection of your petitioners' just rights and interests.

4. Because the exclusive privileges held by your petitioners in Newfoundland were lawfully granted by the legislature of that island, and were approved by Her Majesty in Council ; and upon the faith thereof, several millions of pounds sterling have been expended by your petitioners and their predecessors, and it would be wholly unjust to them that they should be compelled to give up such rights without consideration or compensation.

5. Because your petitioners and their said predecessors have accomplished a great and most difficult work, and done great benefit to Canada as well as to Great Britain and the world at large, by establishing their Atlantic cables and local lines, and no sufficient



cause is or can be assigned for depriving them of the benefit of their vast outlay and unprecedented labours as proposed by the said Act.

6. Because great risk of total interruption of telegraphic communication between Canada and Europe would be occasioned if your petitioners were compelled to cease the working and use of their cables affected by the said Act.

7. Because the Act would have retrospective effect, and is unconstitutional, and is unnecessary and is inexpedient in the public interest.

Your petitioners therefore humbly pray Your Lordship not to assent to the said Act, and to advise Her Majesty to refuse assent thereto.

JAMES ANDERSON,

*Director.*

JOHN GRANT,

*Secretary.*

Dated 24th September, 1874.

*The Hon. the Secretary of State of Canada to the Hon. J. J. C. Abbott, Q.C.*

DEPARTMENT OF THE SECRETARY OF STATE, OTTAWA, 14th October, 1874.

SIR,—I have the honour to acknowledge the receipt of your letter of the 13th inst., inclosing a petition addressed to His Excellency the Governor General in Council, praying that the bill passed during the last session of Parliament, intituled "An Act to regulate the construction and maintenace of Marine Electric Telegraphs" may not be allowed to become law for the reasons set forth therein. The said petition will be at once transmitted to Council; at the same time I beg to inform you that the bill referred to having been reserved for the consideration of Her Majesty the Queen, the subject-matter now rests with the imperial authorities, who are in possession of the views of this government, so that practically the subject is no longer open for the consideration of the Government of Canada.

I have, &c.,

R. W. SCOTT.

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 29th October, 1874.

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's despatch No. 249 of the 2nd inst., transmitting a copy of a report of the Privy Council of the same date on the subject of the Marine Electric Telegraph Bill of the Dominion Legislature, which has been reserved for the signification of Her Majesty's pleasure.

2. I have for some time felt little doubt as to the advice it would become my duty to tender to the Queen with reference to this bill, but I have deferred any expression of opinion on the subject until the receipt of your promised despatch.

3. The bill was reserved (as stated in the previous report of the committee of Council dated June 4th, 1874, which accompanied the bill), because the measure was "one of some importance, and might possibly be considered to prejudice the interests and rights of property, Her Majesty's subjects not residing in Canada." And it is further stated that this was done merely in deference to the language of royal instructions as quoted above.

The subject to which the bill relates is, in my opinion, one of those with which the Dominion Legislature has been, under the 91st and 92nd sections of the Imperial "British North America Act, 1867," expressly empowered to deal. It seems to me to be clearly within the competency of the Dominion Government and Parliament to legislate without any interference on the part of the government of this country upon a local question such as forms the subject-matter of the bill, involving as it does, no points

in respect of which it would appear necessary that imperial interests should be guarded, or the relations of the Dominion with other colonial or foreign governments controlled.

4. I am well aware from the numerous representations which have been made to me on both sides, that the reserved bill affects the pecuniary interests of many persons not residing in Canada, but Her Majesty's Government is not on that account called upon to review the decision arrived at by the legislature of the Dominion. Looking to the large intercourse maintained between Canada and this country, and the extent to which British subjects residing out of Canada hold real and personal property, and are interested in joint stock enterprises within the Dominion, it is obvious that, if the intervention of Her Majesty's Government were liable to be invoked whenever Canadian legislation on local questions affects, or is alleged to affect, the property of absent persons, the self-government conceded to the Dominion might be reduced within very narrow limits.

5. It is to the Dominion government and legislature that persons concerned in the legislation of Canada on domestic subjects and its results must have recourse; and this government cannot attempt to decide upon the details of such legislation without incurring the risk of those complications which are consequent upon a confusion of authority.

6. While, therefore, I entirely appreciate the action of your ministers in reserving the bill, I am of opinion that any further consideration of the subject should be given by that body whose province, as I have observed it, is to deal with such questions, and that I cannot properly assume the function of deciding between the conflicting views of those who have addressed me whether in favour of or against the policy embodied in this measure. In order to enable this to be done, I have decided to leave the present bill in abeyance, and to tender no advice to Her Majesty respecting it.

I have, &c.,

CARNARVON.

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 19th November, 1874.

MY LORD,—With reference to my despatch, No. 220, of the 29th of October, I transmit to you for your information, and for communication to your ministers, a copy of a despatch which I have addressed to the Governor of Newfoundland with regard to the power possessed by the Newfoundland Government, under section 15 of the Newfoundland Act, No. 2, of 1854, to purchase the lines of telegraph and other property of the New York, Newfoundland and London Telegraph Company, with the view of terminating the monopoly conceded by that Act.

I have, &c.,

CARNARVON.

*The Earl of Carnarvon to Governor Sir J. Hill.*

DOWNING STREET, 17th November, 1874.

SIR,—I inclose for your information, and for communication to your ministers, a copy of a despatch which I have addressed to the Governor General of Canada, with regard to the reserved bill of the Dominion Parliament, "to regulate the construction and maintenance of Marine Electric Telegraphs."

2. Until the course to be taken by Her Majesty's Government in this matter had been decided, I thought it expedient to defer answering your despatch, of the 9th May, in which you inclosed a minute of your Executive Council, inquiring whether Her Majesty's Government would, upon terms to be hereafter agreed upon with the Local Government, undertake the purchase claimed by the Government of Newfoundland, under the Act, cap. 2, of 1854, incorporating the New York, Newfoundland and London Telegraph Company, with a view of terminating the monopoly conceded by that Act.



3. The decision which has been arrived at to take no action with respect to the Dominion reserved bill, in order that if thought desirable a fresh bill may be introduced next session, would seem to render it unnecessary, or perhaps impossible, to decide at the present moment whether the Newfoundland Government should take any steps to terminate the monopoly under the provisions of the Act, cap. 2, of 1854.

4. In the event, however, of a sum of money becoming payable, either by arrangement or award for that purpose, Her Majesty's Government do not perceive that they could properly invite Parliament to contribute a portion of that payment.

5. But having regard to the conflicting legal opinions to which you refer in your despatch, I have thought it desirable, in the interests of your government, to consult the law officers of the crown as to the subject-matter comprised within the power to purchase conferred upon the Newfoundland Government by section 15 of the Act above referred to; that is to say, whether that government could claim to buy out the whole interest of the company for the actual appraised value of the telegraph lines, wires, cables, apparatus, vessels and all other appliances connected therewith; or whether any further claim could be made by the company for compensation for the loss of the monopoly which would be terminated by such purchase, or for any other right or interest conveyed by the Act, and further as to the course which it might be advisable that the Government of Newfoundland should take with a view to determine its power to purchase.

6. I am accordingly advised that the expressions "other property" and "all other property connected therewith," used in the 15th section of the Act of 1854, were intended to comprise merely property of the same nature as the property mentioned in the parts of the section immediately preceding these expressions, and therefore that upon payment of the amount awarded as the value of the telegraph lines, wires, &c., under the provisions of the above mentioned section, the undertaking of the telegraph company will become vested in Her Majesty, and that the telegraph company will not be able to insist upon the arbitrators or umpire awarding an amount of compensation for the good-will of the concern, or the loss of the monopoly. If it had been the intention of the colonial legislature that the telegraph company, upon the exercise by the government of the power conferred upon them to purchase the undertaking, should not only retain the lands, &c., granted to the company, but also be paid a sum for the loss of their monopoly, it may be presumed that a very explicit provision to that effect would have been found in the Act.

7. With reference to the course which the Newfoundland Government should take, if it is decided to proceed in the matter, I am advised that it would be desirable for that government to follow exactly the directions given in section 15 of the Act, and in the event of the company neglecting to take any of the steps incumbent on them (*ex. gr.*, to choose an arbitrator) to call in aid the Supreme Court of the colony to enforce compliance with the statutory requirements.

8. An opportunity would then perhaps arise of obtaining a judicial determination as to the rights reserved to the government by the 15th section.

9. In thus conveying to you the advice which I have received on the subject, I do not lose sight of the reason which has rendered your ministers reluctant to take steps for exercising the right of pre-emption; the apprehension, namely, that the award might possibly be made on the opposite principle to that which, as I have informed you, I am now advised to be the correct one, and might consequently involve the payment of a larger sum of money than Newfoundland could undertake unassisted.

10. Looking to all the circumstances, your ministers will probably now be of opinion that it is not likely that any excessive sum would become payable, but on this subject it might be of advantage for the Government of Newfoundland to confer with the Dominion Government, and consider whether some terms could be laid down on which any payment found to be necessary might be apportioned between Canada and Newfoundland.

I have, &c.,

CARNARVON.

### 38 Victoria (1875) Chap. 11.

#### AN ACT TO ESTABLISH A SUPREME COURT AND A COURT OF EXCHEQUER FOR THE DOMINION OF CANADA.

While this Act was under discussion in the House of Commons, it was foreshadowed that government intended, should the bill become law, to provide that appeals to Her Majesty's Privy Council should be prohibited. It was, however, intimated that the Royal sanction would not be given unless the right to appeal to Her Majesty in Council was preserved to all British subjects. A clause was accordingly inserted in the bill, and it ultimately received Her Majesty's assent. \*

\* See Todd on Parliamentary Government in the British Colonies, 2nd edition, p. 184, and note.

### 38 Victoria (1875) Chap. 88.

(*Revised Statutes of Canada, Chapter 62.*)

#### AN ACT RESPECTING COPYRIGHT.

*Reserved for Her Majesty's pleasure, 8th April, 1875. Royal assent given, 20th October, 1875. Proclamation dated 3rd December, 1875. To take effect from 11th December, 1875.*

NOTE—In 1875 an Imperial Act was passed 38 and 39 Victoria, chapter 53, intitled "An Act to give effect to an Act of the Parliament of Canada respecting copyright," by which power was granted to Her Majesty in Council to assent to the Canadian bill notwithstanding the provisions of the Act (Imp.) 28 and 29 Vic., chap. 93, and the Order in Council of 7th July, 1868.

See Statutes of Canada, 39 Vic., 1876, pages VI. and VII.

See also ante, page 11.

### 52 Victoria (1889) Chap. 29.

#### AN ACT TO AMEND "THE COPYRIGHT ACT," CHAPTER SIXTY-TWO OF THE REVISED STATUTES.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 17th August, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd August, 1889.

To His Excellency the Governor General in Council :

In reporting to your Excellency that the Act passed at the last session of the Parliament of Canada, intituled "An Act to amend the Copyright Act" (chap. 62, Revised Statutes), might properly receive your Excellency's assent, the undersigned intimated that the Act would be made the subject of a more extended report, and he now respectfully presents to your Excellency the following observations in pursuance of that intimation :—

The Act contains a provision that it shall not come into force until proclaimed by your Excellency, and there was not, and is not, any intention on the part of your Excellency's Government, to advise the issue of a proclamation bringing it into force until it has been submitted to Her Majesty's Government, with the explanations which your Excellency's advisers can present, and until Her Majesty's Government shall concur in the issue of the proclamation.

The concurrence of Her Majesty's Government has been considered necessary, because the Act deals with a subject on which imperial legislation extending to all Her Majesty's possessions now exists, and in respect to which it is not desired by your Excellency's Government that a measure should be adopted which would conflict with the policy which Her Majesty's Government has hitherto pursued excepting in so far as the important interests involved in Canada urgently require, and excepting from a date before which any preliminary arrangements can be concluded in order to prevent confusion and surprise. Moreover, the fact that the imperial legislation, adopting the Berne Convention on the subject of copyright, extends to all Her Majesty's possessions (and must continue to extend to Canada until the expiration of a year from notice of denunciation) makes it necessary that before the proclamation should be issued, Her Majesty's Government should be asked to give the notice of denunciation on behalf of Canada, and that a year's delay should elapse after that notice, and that, before the Act of last session can be given effect to, an Order of Her Majesty in Council be obtained, releasing Canada from the operation of the statute which makes the Berne Convention operative throughout the empire. The request on the part of the Government of Canada for the notice of denunciation of the Berne Convention has already been, or is now about to be, transmitted, and the duty of the undersigned is, therefore, limited to an explanation of the reasons which induced the adoption of the Act of last session, and a statement of the principles on which such legislation can, in his view, be sustained.

For reasons which will not be dilated on at length in this report, the copyright system heretofore in force (under the Imperial and Canadian legislation) has been found to be most unsuitable to Canada, and the Berne Convention is found to increase the causes of complaint which previously existed.

The copyright law in force in Canada (of which the Act of last session was an amendment), irrespective of the International Copyright Act of 1886, which gives effect to the Berne Convention, consists, as has been intimated, partly of Imperial and partly of Canadian legislation.

Under it every work copyrighted in Great Britain, had copyright protection without the requirement of publication in Canada. Under the protection of this system United States authors secure copyright in Great Britain and her possessions by publishing in England (sometimes by publishing a limited edition, not intended to supply the market and not sufficient therefor) and thus secure control of the Canadian market, while a Canadian cannot obtain such copyright privileges in the United States.

The rights which British authors and publishers have in British possessions under this condition of the law have been greatly abused by the sale of their copyright privileges to American publishers and their refusal to sell to Canadian publishers on like terms. By this means United States publishers have been enabled to command the Canadian market under the provisions of legislation which were not intended for their benefit but for the benefit of the British author and publisher. The prices of American reprints are so low that the British publications have no chance of competing with them in Canada, and Canadian reprints being prohibited by the copyright law, the business of reprinting for Canadian readers is thus to a great extent thrown into the hands of American publishing houses, to the very great detriment of the publishing interests of Canada.

By the legislation of last session it is proposed that the persons having copyright under imperial legislation or under any treaty arrangement with Great Britain, may preserve the exclusive right as to Canada by publishing or republishing in this country within a certain time, and that if he does not so publish or republish, his copyright shall still avail him, to the extent of enabling him to collect a royalty on all republications made in Canada by any other person.



The evils before mentioned which have occasioned complaint will be augmented by the provisions of the Berne Convention, which extends the copyright privileges without publication in British possessions, to authors of any country which has joined or may join the Copyright Union formed by that convention.

For the benefit conferred on Canadian authors (who are comparatively a very limited class) of copyright in the countries comprised in the Berne Convention Unions the business of publishing in Canada will be repressed as to works published in all these countries, and the United States publishers will be free from any restriction of that kind, not only as to the vast markets of their own country, but as to Canada as well.

Parliament considered that the peculiar position in which Canada is placed on account of her proximity to the United States, and the copyright policy of the United States demand peculiar treatment in legislation on this subject, and treatment different from both the Berne Convention and from the Imperial and Canadian Copyright Acts heretofore in force.

The Canadian Parliament has on more than one occasion expressed this opinion and did so emphatically at its last session by unanimously passing the Act now under consideration. If it should seem to Her Majesty's Government that further explanations are needed to convince them of the expediency of the proposed change, or of the necessity of the Act of last session being allowed to go into operation, he trusts that a further opportunity will be afforded of making these explanations, as abundant material exists therefor in the experience of all who are interested in the publishing business in Canada.

The undersigned submits that the royalty provision of the Act of last session in favour of the holders of the British copyright is reasonable, and affords ample facilities for collection. The Government of Canada will be prepared to submit to Her Majesty's Government the regulation which may be adopted under the Act for securing the collection of the royalty and the payment thereof to the proper parties.

It only remains for the undersigned to observe as regards the policy of permitting re-publication in Canada, that under existing legislation the importation of foreign reprints into Canada is permitted, on the imposition of a customs duty in favour of the copyright holder. The Act of last session will make the same provision in favour of the Canadian publisher, but under regulations which will restrain the influx of foreign reprints and afford a means of collecting the compensations to the copyright holder.

The undersigned has reason to apprehend that a question may be raised as to the power of the Parliament of Canada to pass the Act in question, because he is aware that the previous legislation on this subject has been stated to require the sanction of the Imperial Parliament and because that view has been based on very eminent legal authority. On that subject he begs to present the following considerations :—

The Act in question is understood not to conflict in any way with imperial legislation passed since the adoption of the British North America Act, 1867.

For that reason, as has been already intimated, no proclamation will be issued bringing the Act into force until after the Imperial Copyright Act of 1886, giving effect to the Berne Convention, ceases to be applicable to Canada. The remaining question, therefore, simply is as to the right of the Parliament of Canada, under the British North America Act, to make regulation in Canada regarding copyright in Canada, notwithstanding that these regulations may differ from those existing under imperial legislation adopted prior to the British North America Act.

The view which the undersigned respectfully presents is that as regards all those subjects in respect of which powers were given to the Canadian Parliament by the British North America Act, the true construction of the British North America Act is that Parliament may properly legislate without any limitation of its competency excepting the limitation which Her Majesty can always impose by disallowance (whether the Act be within the power of Parliament or not), and excepting also as to control by imperial legislation subsequent to the British North America Act and applicable to Canada. As to this latter it may be considered, in so far as it deals with the subjects given to the Parliament of Canada, as amendatory of the British North America Act.

One of the subjects over which power was given to the Parliament of Canada to legislate by "The British North America Act" was "copyright." (See section 91.)

When, in 1872, the Parliament of Canada passed an Act respecting copyright in pursuance of this section of the British North America Act, the Act was reserved for royal assent, and Lord Carnarvon in a despatch dated 15th June, 1874, stated to the Earl of Dufferin, one of your Excellency's predecessors, that he had been unable to advise Her Majesty to assent to the Act, and that he had taken the advice of the law officers of the Crown on the subject.

Lord Carnarvon, in that despatch, intimates that the 91st section of the British North America Act, above referred to, is to be interpreted by one of the headings which appear in the statute, namely, "Distribution of Legislative Powers," and he almost seems to incline to the opinion that the 91st section on which all the powers of the Parliament of Canada depend, is intended to withdraw the powers from the provincial legislatures, and not to confer any substantial authority on the Parliament of Canada.

If that view were correct, "The British North America Act" would simply have been a withdrawal from the legislatures of the various provinces which were thereby united of a large portion of the authority which they had possessed ever since representative institutions were conferred upon them, and it is difficult to see that any authority is conferred upon the Parliament of Canada, or that the Parliament has now the powers which belong to the parliaments of all other self-governing colonies.

Lord Carnarvon, however, after making, in effect, the statement that the 91st section of the "British North America Act" is merely a part of a scheme for the distribution of legislative powers, and is not to be considered as it always has been regarded and interpreted by the courts as well as by Her Majesty's government, as the gift of legislative power to Canada, proceeds to say, that the effect of the Imperial Act (British North America Act) is "to enable the Parliament of Canada to deal with colonial copyright within the Dominion," and that "it is clear that it was not contemplated to interfere with the rights secured to authors by the Act of 5 and 6 Vic., or to override the provisions of the Act."

It may be said in referring to this observation, that neither the Act of 1872, nor the Act of last session, did anything more than deal with colonial copyrights.

It is claimed that the British North America Act, section 91, gave the Parliament of Canada power as full as that possessed by the Imperial Parliament to say who should and who should not have copyright within the Dominion; and as regards the observation that it was not contemplated to interfere with the rights secured to authors by the Imperial Act, all objections under that head may be dispensed with, because the Act of last session will not affect any rights which have been secured before it shall come into operation. The undersigned cannot advance the foregoing views without extreme diffidence, because he finds that Lord Carnarvon's despatch intimates that in the opinion which his Lordship expresses he is supported by the law officers of the crown, and also by those eminent lawyers, the present Lord Selborne and the present Lord Herschell, whose report he laid before Parliament in 1872.

In the face of such eminent authorities he would hardly venture to press upon the attention of Her Majesty's government the view of the Canadian government which he has above presented, if it were not to his mind perfectly plain that the people of Canada would hold him culpable if he failed to assert what was the only interpretation under which they received the constitution and under which they were willing to be content with that constitution.

If the 91st section of the British North America Act has not conferred on the Parliament of Canada all the powers of the Parliament of the United Kingdom in respect to the subjects there enumerated, the gift of powers made by that Act is delusive, in respect to the Canadian Parliament, and is less than the gift of powers which the provincial legislatures previously enjoyed regarding the same subjects.

The undersigned is encouraged to state this opinion not only because it has been supported by the Canadian Parliament and because it agrees with the understanding of



the Canadian people on the subject from the first, but because the same view has been upheld, he ventures to submit, by the Judicial Committee of the Privy Council, on more than one occasion since the despatch of Lord Carnarvon in 1874.

Before referring to the decisions of that tribunal however, he would advert to the opinion presented to Lord Carnarvon in 1872, from the two law officers already named. In that opinion the view is stated that the powers of Parliament are exclusive only so far as relates to the legislatures of the provinces of which Canada is composed. This view it is not intended to controvert.

It has never been claimed that the powers of the Parliament of Canada are exclusive of the powers of the Parliament of Great Britain, and nobody can doubt that the Parliament of Great Britain can at any time (limitations of good faith and national honour not being considered) repeal or amend the British North America Act, or exercise in relation to Canada, its legislative power over the subjects therein mentioned. Subject to the same limitations, Her Majesty's government can, of course, disallow any Act of the Parliament of Canada. It is respectfully submitted that the Canadian Parliament, except as to the control which may be exercised by the Imperial Parliament, by a statute subsequent to the British North America Act, and except as to the power of disallowance, possesses unlimited power over all the subjects mentioned in the 91st section, and that it is necessary that it should do so for the well-being of Canada and for the enjoyment of self-government by its people.

In the case of *Hodge vs. The Queen* (9 Appeal Cases, 117), decided by the Judicial Committee of the Privy Council in 1883, the following passage declares: "When the British North America Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred, not in any sense to be exercised by delegation from, or as agents of, the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92, as the Imperial Parliament in the plenitude of its power possessed and could bestow.

"Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion would have had under like circumstances, to confide, to a municipal institution, or body of its own creation, authority to make by-laws or resolutions as to the subjects specified in the enactment, and with the object of carrying the enactment into operation and effect."

In the case of *Harris vs. Davies* (10 App. Cases, 279), the Judicial Committee of the Privy Council decided, in 1885, that the legislature of New South Wales, under a charter not wider than the British North America Act, had power to repeal a statute of James I. (21 James, chap. 16, sec. 6), and had impliedly done so by 2 Vic., chap 13, sec. 1, of that colony, which, according to its true construction, placed an action for words spoken upon the same footing, as regards costs and other matters, as an action for written slander.

In the case *Powell vs. Appollo Candle Company (Limited)* (10 App. Cases, 282), the Judicial Committee decided, in the same year, that a colonial legislature, within the area of its powers, is unrestricted.

The following passage from the judgment is pertinent to the present question:—

Two cases have come before this board in which the powers of colonial legislatures have been a good deal considered, but these cases are of too late a date to have been known to the Supreme Court when their judgment was delivered. The first was the case of *Reg. vs. Burah*, in which the question was, whether a section of an Indian Act conferring upon the Lieutenant-Governor of Bengal the power to determine whether the Act, or any part of it, should be applied to a certain district, was or was not *ultra vires*. In the judgment of the board, given by the Lord Chancellor, the legislation is declared to be *intra vires*, and the Lord Chancellor lays down the general law in these terms:—

"The Indian legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which

circumscribe these powers. But when acting within those limits it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have plenary powers of legislation as large, and of the same nature, as those of Parliament itself. The same doctrine has been laid down in a later case, of *Hodge vs. The Queen*, where the question arose whether the legislature of Ontario had, or had not, the power of intrusting to a local authority, a board of commissioners, the powers of enacting regulations with regard to their Liquor License Act of 1877, of creating offences for the breach of those regulations, and annexing penalties thereto. Their Lordships held that they had that power. It was argued then, as it was argued to-day, that the local legislature is in the nature of an agent or delegate, and, on the principle *delegata potestas non potest delegari*, the local legislature must exercise all its functions itself, and can delegate or intrust none of them to other persons or parties. But the judgment, after reciting that such had been the contention, goes on to say: "It appears to their Lordships, however, that the objections thus raised by the appellants is founded on an entire misconception of the true character and position of the provincial legislature."

"They are in no sense delegates of or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers, not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample, within the limits prescribed by section 92, as the Imperial Parliament in the plenitude of its power possessed or could bestow. Within these limits of subjects and areas the local legislature is supreme, and has the same authority as the Imperial Parliament."

The case of *Riel vs. The Queen*, decided by the same tribunal in the same year, is likewise pertinent. There had been three imperial statutes for the regulation of the trial of offences in Rupert's Land, since known as the North-west Territories of Canada.

The statutes of Canada made other provisions inconsistent with these statutes, and the conviction of the prisoner had taken place under the statutes of Canada. The Lords of the Judicial Committee declined to admit an appeal, entertaining no doubt as to the correctness of the conviction.

The opinion of Lord Carnarvon seems to have been based on a strict view taken of the imperial statute known as "The Validity of Colonial Laws Act" (28 and 29 Vic., cap. 63) which declared that colonial statutes should be void and inoperative if they should be repugnant to the provisions of any Act of Parliament extending to the colonies, or repugnant to the provisions of any order or regulation made under the authority of such Act, and having in such colony the force and effect of such Act.

There may be grounds for argument that, as the British North America Act was passed subsequently to the statute, it confers a constitution more liberal than those to which the statute applied.

Another view which may be urged is, that the repugnancy, in order to have the effect indicated, must exist in relation to some statute passed after the creation of the legislature of a colony. The statute does not seem, certainly, to have been construed by the judicial decision in the manner indicated by Lord Carnarvon.

If the view which his Lordship takes is correct, it will be impossible for the Parliament of Canada to make laws in regard to any of the twenty-one subjects which constitute the "area" of the Canadian Parliament (to adopt the phrase used in the decision of *Hodge vs. The Queen* in relation to the Ontario legislature), when such legislation was repugnant to any legislation which existed previously, applicable to these subjects in the colonies.

There undoubtedly did exist imperial legislation as regards all those subjects in the colonies, at a time long anterior to the gift of representative institutions, and it was never supposed to be necessary that Canada, or the provinces now constituting Canada before the union, should obtain the repeal of that legislation by the Imperial Parliament, before they proceeded to adopt such measures as became necessary, from time to



time, in the government of the country. It is respectfully submitted that, in respect to all these subjects, the Parliament of Canada must be considered to have the plenary powers of the Imperial government (to quote the words of the Judicial Committee), subject only to such control as the Imperial government may exercise from time to time, and subject also to Her Majesty's right of disallowance, which the British North America Act reserves to her, and which no one doubts will always be exercised with full regard to constitutional principles and in the best interests of the empire, when exercised at all.

For these reasons the undersigned respectfully recommends that Her Majesty's government be moved to permit the Copyright Act of last session to go into operation, subject to a date being hereafter agreed upon by Her Majesty's government for the bringing it into force.

He respectfully asks, also, that your Excellency's government may be allowed to discuss all questions raised in this report at further length, and in further detail, if necessary, as they involve grave consequences for the Dominion of Canada, not merely in relation to the subject of copyright, but in relation to the rights and powers of Parliament, and he recommends that a copy of this report, if approved, be transmitted to Her Majesty's Principal Secretary of State for the Colonies.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 20th August, 1889.

MY LORD,—I have the honour to transmit to you, for the information of your Lordship's government, copies of a letter signed on behalf of the Copyright Association and the Musical Copyright Association, and of the reply which had been returned to it respecting the Canadian Copyright Act of 1889.

I have, &c.,  
KNUTSFORD.

*To the Right Honourable Lord Knutsford, K.G., C.B., Her Majesty's Principal Secretary of State for the Colonies and British Dependencies :*

MY LORD,—We, the undersigned representing the Copyright Association and the Musical Copyright Association, respectfully drew your Lordship's attention to "The New Canadian Copyright Act of 1889," and beg to point out that it is so highly injurious to all British copyright owners, except those resident in the Dominion of Canada, that we are constrained to ask you to advise Her Majesty to withhold from it Her Majesty's royal assent and sanction.

Section 1, repealing section 5 of the Canadian Copyright Act of 1875, substitutes therefore a section requiring as a condition of retaining copyright therein in Canada, the registration on publication, and also the reprinting and republication in Canada within one month of original publication of all British copyright works and work entitled to copyright under the Berne Convention.

Section 2 repeals section 6 of the said Act of 1875, and enacts that, if the above conditions are not complied with, a "licensed edition" may be published by any one giving security to pay the Canadian government, for the copyright owner, 10 per cent on the retail price of all copies issued, but the Canadian government is not to be responsible to the copyright owner for its collection.

Section 6 provides that, whenever a licensed edition is published, the Canadian government may prohibit the introduction into Canada of copies of the author's original edition.

We need hardly point out to your Lordship that such legislation is *ultra vires* : but as confirming this view we venture to quote the following opinions given to the Copyright Association by Lord Selborne and Lord Herschell.

## OPINION.

In consequence of some publishers in Toronto having issued an unauthorized reprint of "Ginx's Baby," and of the newspapers in Canada claiming for their publishers the right of reprinting English copyright works under the Dominion Act of 1867, and the Canadian Copyright Act of 1868, a case was submitted to Sir Roundell Palmer, Q.C., and Mr. Farrer Herschell, Q.C., and their opinion asked on the following points :—

1. Whether the Imperial Copyright Act of 1842 (5 and 6 Vic., cap. 54) is still in force in its integrity and still runs in Canada, notwithstanding the Dominion Act of 1867 (30 Vic., cap. 3), and the Canadian Copyright Act of 1868 (31 Vic., cap. 54), especially having regard to the Imperial Act of 28 and 29 Vic., cap. 63, as to colonial legislation?

2. In the event of the above-mentioned Act of 1842 being in force, what course should be adopted to rectify the existing apparent anomalies consequent on the Canadian Act of 1868 (31 Vic., cap. 54), and to protect the interests of British authors and publishers?

3. How is the exclusive legislative authority given by section 91 of the Dominion Act (30 Vic., cap. 3), to be construed generally in reference to Imperial Acts?

4. If the above Canadian Act be valid and override the Imperial Act, what protection have British authors in respect of reprinting and importation into the United Kingdom of works printed and published in Canada under its provisions, either with or without their consent?

5. Whether books first published in the United Kingdom are entitled to the benefits of the Canadian Copyright Act, 1868 (31 Vic., cap. 54), if duly entered, reprinted or republished in Canada?

Sir Roundell Palmer, Q.C., and Mr. Herschell, Q.C., gave the following reply :—

We are of opinion that the Imperial Copyright Act, 5 and 6 Vic., cap. 45, is still in force in its integrity throughout the British dominions, in so far as it prohibits the printing in any part of such dominions, a book in which there is subsisting copyright under that Act without the consent of the proprietor. It is abundantly clear that the provision in the Act of the Imperial legislature (30 Vic., cap. 3), by which the Dominion of Canada was constituted, declaring that the exclusive legislative authority of the Dominion Parliament extends (amongst other things) to copyrights, has reference only to the exclusive jurisdiction in Canada of the Dominion legislature as distinguished from the legislatures of the provinces of which it is composed, and the recent Copyright Act of the Canadian legislature (30 Vic., cap. 34) was in substance no more than a re-enactment for the whole Dominion, of provisions which had previously been in force in one, at least, of the provinces, by the enactments of its legislature. It gave a copyright throughout Canada to works published in any part of the Dominion, but in our opinion it was not competent to and did not affect the protection against piracy afforded by the Imperial Act throughout the whole British dominions, in respect of works published in the United Kingdom.

The provision in the 5th and 6th Vic., which prohibits the importation into any part of the British dominions of printed copies of British copyright works, is not now in force in its integrity. The Imperial Act of the 10th and 11th Vic., enables Her Majesty to suspend the prohibition in the case of any colony which should pass an Act providing reasonable protection to the authors of such works. The Canadian legislature, under this provision, passed an Act (30 Vic., cap. 56) imposing a duty for the benefit of the authors of such imported works, and the prohibition against importation has accordingly been suspended, and does not now apply to Canada, but with this exception, the Copyright Act, 5 and 6 Vic., is still in force throughout that colony.

ROUNDELL PALMER.

FARRER HERSCHELL.

LINCOLN'S INN, 7th September, 1871.



## OPINION.

The course taken by Canada in thus legislating is also directly at variance with article 2 of the International Copyright Union, to which Canada is a party.

To insist on registration in any other than the country of origin is also contrary to the Berne Convention and a hardship on authors, for they cannot comply with it in the most cases without employing and paying special agents, and yet they are to be mulcted with entire loss of copyright in the Dominion of Canada in default of so doing. In England it is not compulsory, in Germany it is not required, and in France it is only necessary to present copies and obtain a receipt. Registration is not now required in any country, except the country of origin.

To insist on reprinting is detrimental to the author's writings, as he cannot revise the licensed edition. It also conflicts with the Imperial Copyright Act of 5 and 6 Vic., cap. 45, sec. 15, and Berne Convention.

According to the undermentioned opinion, copyright of a British work not first published in Canada, can only be obtained under the Imperial Copyright Act, 5 and 6 Vic., cap. 45, and therefore, the Canadian Copyright Act does not affect British authors.

Further opinion on fifth point of previous case :—

We are of opinion that the author of a work already published in the United Kingdom, and possessing the rights conferred upon him by the Imperial Copyright Act of 5 and 6 Vic., cannot by re-publication in Canada, and by complying with the provisions of the Canadian Copyright Act (31 Vic., c. 54), obtain for his work the protection against importation into Canada afforded by that Act. We think upon a true construction of the Act, it cannot apply to a case of a work already possessing, by virtue of the Imperial Act, copyright throughout Canada. Any other construction would lead to this startling consequence, that the author of a work who had enjoyed copyright in Canada, by virtue of the Imperial Act, during the whole time for which it existed under that Act, could by then republishing and recording his work in Canada, obtain copyright in that colony for the further period of 28, or in some cases, 42 years. We think, further, that the provisions of the Imperial Act, 10 and 11 Vic., c. 95 (which is now in force as regards Canada), afford additional ground for the view we take that the protection alluded to cannot be obtained by a re-publication in Canada.

ROUNDALL PALMER.

FARRER HERSCHELL.

LINCOLN'S INN, 2nd December, 1871.

Your Lordship will notice that under the Canadian Act the author is in effect compelled to grant a license to any number of applicants. It is true that the applicant is required to pay a royalty of 10 per cent, but this requirement is in reality illusory, because he has no means of ascertaining or obtaining an account of the number of copies "issued."

The word issued itself contains a difficulty, for it may mean copies printed, or copies sold, or copies given away. It is indefinite, but if it is on copies sold or given away, no adequate provision is made for ascertaining the number of copies on which the royalty is to be paid.

We must also emphatically draw your Lordship's attention to the fact that no power exists to prevent the Canadian reprint being imported into the United Kingdom and into other British colonies, or to hinder its competing with the author's edition, for it will be lawfully printed, and printed within the British dominions. Such power is destructive of all British copyright.

We may add that this change in the law is obviously not made in the interests of literature, for Canada imposes a 15 per cent duty on imported books and thus checks their introduction there, especially in the form of cheap editions. Neither is it required in the interests of the publisher, for he can make his own arrangements with the author even to the extent of supplying the United States as well as his own, and we cannot refrain from observing that it is unjust from every point of view to the author.

May we also venture to add that the tendency in every country possessing a literature or desiring to acquire one is to give the author full control of his work, and to leave him to make his commercial arrangements in the way which he thinks best promotes his own interests. The law merely protects his right of property, and the spirit of the Berne convention is to make those rights as complete and uniform as possible.

We have the honour to be your Lordship's humble servants,

T. NORTON LONGMAN,

*Treasurer.*

F. R. DALDY, *Hon. Secretary,*

*Copyright Association.*

E. ASHDOWN, *Hon. Secretary,*

*Musical Copyright Association.*

*Colonial Office to Mr. Daldy.*

DOWNING STREET, 20th August, 1889.

SIR,—I am directed by Lord Knutsford to acknowledge the receipt of the letter signed by Mr. Longman and yourself on behalf of the Copyright Association and by Mr. Ashdown for the Musical Copyright Association, respecting the Canadian Copyright Act of 1889.

I am to state that the Act in question has not yet been received in this department, and that it will be referred to the law officers of the crown when it arrives.

I am, &c.,

JOHN BRAMPSTON.

*Report of the Honourable the Minister of Justice.*

DEPARTMENT OF JUSTICE,

OTTAWA, 17th January, 1890.

*To His Excellency the Governor General in Council:*

The undersigned to whom was referred a despatch from the Right Honourable the Principal Secretary of State for the Colonies, transmitting copies of a letter signed on behalf of the Copyright Association and the Musical Copyright Association respecting the Canadian Copyright Act of 1889, and of his Lordship's reply thereto, has the honour to report that the subject has been already so fully reported on in an approved report already transmitted for the information of Her Majesty's Principal Secretary of State for the Colonies, that no special action on the present reference seems necessary.

Respectfully submitted,

JOHN S. D. THOMPSON,

*Minister of Justice.*

*The Secretary of State for the Colonies to the Governor General.*

COLONIAL OFFICE, DOWNING STREET, 25th March, 1890.

MY LORD,—In reply to your despatch (No. 191) of the 26th August, I have to state that I have given very careful consideration to the arguments put forward in the able report of the Minister of Justice, in which the Privy Council concurred, with reference

to the Act of the last session of the Dominion Parliament to amend the Copyright Act (cap. 62, Revised Statutes of Canada,) but I regret to say that I am unable to authorize you to issue a proclamation to bring that Act into force.

I am advised by the law officers that the powers of legislation conferred upon the Dominion Parliament by the British North America Act, 1867, do not authorize that Parliament to amend, or repeal, so far as relates to Canada, an Imperial Act conferring privileges within Canada.

This advice, as your ministers will observe, by reference to the Parliamentary Paper (Copyright Colonies) of April, 1875, is in entire accordance with the advice tendered by former law officers—now Lords Selborne and Herschell—in 1871, and by the law officers in 1874 and 1895, and I may add with the judgments of two judges in the case of *Smiles vs. Belford*, on appeal I, Upper Canada Reports, 436. The reasons upon which this view is based are very clearly stated by Lord Carnarvon in his despatch of 15th June, 1874 (copy annexed), and I have only to express my concurrence in those reasons.

This important subject will doubtless receive further consideration by your ministers, and it may, therefore, be perhaps not out of place, if I call attention to two provisions in the Act passed last by the Dominion Parliament, which have been directly brought under my notice, and to which special objection is felt by the proprietors of copyright in this country.

In the first place, it has been pointed out that under the Canadian Copyright Act of 1875, which had effect given to it by the Imperial Act of 1875, no limitation of time for printing and publishing, or reprinting and republishing, in Canada was imposed, whereas by the fifth section of the Act of the last session, one month only is allowed for such proceeding, and I am assured that in the great majority of cases it would be practically impossible within that time to make the necessary arrangements. I should hope therefore that upon further consideration it may be recognized that the time proposed is insufficient.

The second provision to which objection is strongly felt is that which empowers the granting of licenses to print and publish works for which copyright might, but for neglect or failure, have been obtained. I am aware that the principle of granting such licenses was affirmed by the royal commissioners on copyright in their report of the 24th May, 1878, and that they recommended such grants "in case no adequate provision be made by republication in the colony or otherwise, within a reasonable time after publication elsewhere for a supply of the work sufficient for general sale and circulation in the colony," but the conditions which in their opinion seemed reasonable as conditions precedent to the granting of such licenses, have hardly had effect given to them in this Act, especially when it is remembered that the copyright proprietors is only allowed one month within which to publish or to republish.

And as bearing upon this question of licensing, I inclose, for the consideration of your ministers, the copy of a letter which I have received from Mr. Daldy, who represents the copyright association in this country, and in which some reasons, which appear to me to carry considerable weight, are advanced against the proposed system of licensing.

I observe that in the report of the Ministers of Justice, it is assumed that before any proclamation under the Copyright Act of last session could be issued, it would be necessary for Her Majesty's government to give, on behalf of Canada, notice of denunciation of the Berne convention. Any action on the part of Her Majesty's government in this direction has for the present been rendered unnecessary, inasmuch as they are not able to concur in the issue of a proclamation.

Your minister will doubtless further consider whether it would not, upon the whole, be desirable to leave the law as it now stands, until it is seen what is the outcome of the legislation pending upon the subject of copyright in the United States, and of any negotiations between the government of Her Majesty and of the United States which may be consequent thereon. The result of those negotiations might be to remove some of the difficulties now felt in the Dominion, and to obviate further legislation.



In conclusion, I will only add that it is my desire to assist, as far as possible, any well considered measure which, while substantially preserving the rights of copyright proprietors under the Imperial Act, will meet the wishes of the Canadian people.

I have, &c.,

KNUTSFORD.

(*Inclosure*).

*Lord Carnarvon to the Governor General.*

COLONIAL OFFICE, DOWNING STREET, 15th June, 1874.

MY LORD,—I have to acknowledge the receipt of your despatch of the 16th ultimo, transmitting for my consideration attested copies of resolutions of the Parliament of Canada, urging that Her Majesty's assent should be given to a bill entitled: "An Act to amend the Act respecting Copyright," passed in the session of 1872, and reserved by Lord Lisgar.

2. You will have learnt by my telegram of the 11th instant, that I have felt myself unable to advise Her Majesty to assent to this bill, and I now proceed to state shortly to you the ground upon which I have reluctantly, though without any doubt, been compelled, after taking the advice of the law officers of the Crown, to tender this advice to Her Majesty.

3. The Imperial Copyright Act, 5 and 6 Vict., cap. 45, is as you are aware still in force in its integrity throughout the British dominions, in so far as it prohibits the printing in any part of such dominions of a book in which there is subsisting copyright under that Act, without its assent of the owner of the copyright, although the provision in that Act which prohibits the importation of foreign reprints of British copyright works has been modified by the subsequent Act 10 and 11 Vict., cap. 95.

4. There is a recital in the Canadian bill that by the British North America Act, 1867, express power is given to the Parliament of Canada to legislate upon the subject of copyright, but it is to be observed that the section (the 91st) containing this provision is one of several having reference, (under the 6th general head of the Act) to "the distribution of legislative power," and provides that "copyright" amongst other subjects are to be dealt with by the Parliament of Canada, while other subjects (under section 92) are to be exclusively dealt with by the provincial legislatures.

5. The effect of the Imperial Act is to enable the parliament of Canada to deal with colonial copyrights within the Dominion, but it is clear that it is not contemplated to interfere with the right secured by authors by the Imperial Act of 5 and 6 Vict., cap. 45, or to over-ride the provisions of that Act.

6. Upon this point I am supported not only by the opinion of the present law officers of the Crown, but by the opinion of those eminent lawyers, the present Lord Selborne and Mr. Herschell, Q. C., whose reports will be found in the copyright paper presented to Parliament in 1872, a copy of which I annex for information.

7. I may further observe, if confirmation of this view were needed, that the report of the Committee of the Privy Council of the 6th June, 1872, inclosed in your despatch of the 6th June, admits that the provisions of the Canadian bill are in conflict with imperial legislation.

8. In these circumstances I have had no alternative but to advise Her Majesty that her consent could not properly be given to the Canadian bill, and that I may add that the validity of this bill would not have been established even if Her Majesty had been pleased to assent to it, inasmuch as by the second section of the Colonial Laws Validity Act (28 and 28 Vic., c. 63) any part of a colonial law which is repugnant to an Imperial Act extending to the colony in which such law is passed, is *pro tanto* absolutely void and inoperative.

9. I am aware that the subject of colonial copyright has long been under consideration, and that attempts were made by Her Majesty's late government in communica-



tion with yourself and your ministers to arrive at a settlement of this difficult but most important question. I will only now express my readiness to co-operate and my confident hope that we may without difficulty be able to agree in the provisions of a measure which, while preserving the rights of the owners of copyright works in this country under the Imperial Act, will give effect to the Canadian government and Parliament.

I have, &c.,

CARNARVON.

*Sir John Thompson to Lord Knutsford.*

(Letter approved by Order in Council of 7th August, 1890.)

WESTMINSTER PALACE HOTEL, LONDON, S.W., 14th July, 1890.

*To the Right Honourable Lord Knutsford, Her Majesty's Principal Secretary of State for the Colonies, Downing Street:*

MY LORD,—In the report which I had the honour to make to his Excellency the Governor General of Canada in Council on the subject of copyright in Canada, dated the 3rd of August, 1889, and which was approved by his Excellency and transmitted to your Lordship, it was asked that his Excellency's government might be allowed to discuss the questions dealt with in that report at further length, and in further detail if necessary, as they involved grave question of great consequence to Canada, not only with respect to copyright, but in relation to the powers of the Parliament of the Dominion.

Having had the privilege to-day of carrying on that discussion, to some extent, with your Lordship, I avail myself of the permission accorded to me at our interview, to place in writing before you some of the arguments which I am instructed by the government of Canada to advance, in amplification of my report above mentioned.

In your Lordship's despatch of the 25th of March, 1890, in reply to the observation in that report, you called the attention of the government of Canada to some provisions of the Copyright Act of Canada of 1889, to which you stated that special objection was felt by the proprietors of copyright in Great Britain. One of these was the limit of time (one month) allowed for the British author or publisher to republish in Canada, after publication in Great Britain. Your Lordship had been assured that in a great majority of cases it would be impracticable within the period of one month to make the necessary arrangements for republication in Canada, and expressed the hope that upon further consideration it might be recognized that the time proposed was insufficient. Upon this point, as well as to other details of the Act, it is unnecessary to trouble your Lordship with any argument at the present moment. The question to be settled first, and to which I understand your Lordship to wish that I shall address myself, relate to the principle of the Act and to the power of the government of Canada to pass it. Any details which are felt to be unfair or inadequate, in view of all the interest involved, will, I am sure, be reconsidered by the Parliament of Canada. At the same time I may observe that it is contended on the part of those who are interested in the publishing business in Canada that the time referred to is not unreasonably short, and that the holder of copyright in the United Kingdom can easily make arrangements for simultaneous production in the two countries, so as to have republication made in Canada within the time specified in the Act. The time for republication must necessarily be of short duration, because, during that period, the importation of foreign reprints of the work as well as the republication in Canada by other than the copyright holder in Great Britain is prevented, pending the exercise of the option by him as to whether he will avail himself of the Canadian copyright law or not.

On this, and on all other matters of detail, any suggestions which your Lordship may think proper to make will, I am sure, receive the earnest and respectful attention of the Canadian government.

Your Lordship's despatch refers his Excellency's government for some particulars of the objections which have been pressed on you to a letter dated "Aldine House, Belvidere, Kent, 20th February, 1890," supposed to have been addressed to me, signed by Mr. F. R. Daldy, honorary secretary of the Copyright Association, but I have been unable to gather much information from that letter as to the objections which are entertained in England with regard to the Canadian Act of 1889. Mr. Daldy and the association which he represents are hostile to any measure by which the right of any colony to self-government on this subject may be asserted or conceded, and his letter suggests an entire abandonment of the legislation of 1889, and the adoption of further measures to carry out more strictly the existing law, which is unsatisfactory in Canada. I may mention here, in case the fact should be of any importance, that I know Mr. Daldy's letter only by the copy appended to your Lordship's despatch. If Mr. Daldy has ever sent such a letter, it has never reached me.

Coming now to a statement, more in detail than could be made at our interview, of the views which prevail in Canada on this subject, I am charged by the Canadian government to express to your Lordship, in the strongest terms which can be used with respect, the dissatisfaction of the Canadian government and Parliament with the present state of the law of copyright as applicable to Canada, and to request most earnestly from Her Majesty's government that they will apply a remedy, either by giving approval to a proclamation to bring the Canadian Act of 1889 into force, or by promoting legislation in the Parliament of Great Britain to remove any doubt which may exist as to the power of the Parliament of Canada to deal with this question fully and effectually.

Your Lordship is aware that the statute of 1842 (5 and 6 Vic., c. 45) is the imperial statute by which copyright in Great Britain is extended to all the colonies and dependencies of the empire.

Any principles of common law by which authors and publishers might have claimed copyright were superseded by that Act and given to any person who should publish a literary work in the United Kingdom, if he should be a subject of Her Majesty, or a resident of any part of Her Majesty's dominions.

I need not remind your Lordship that the operation of the Act was immediately attended with great hardship and inconvenience in the North American colonies.

The legislature of the province of Canada, in the year 1843, passed a series of resolutions expressing strong remonstrance, and nearly all the other legislatures in North America followed.

The legislature of Nova Scotia, in 1845, memorialized Her Majesty for a modification of the Act. They stated that the high prices of English books, and the monopoly of London publishers, which were felt to be serious grievances in the United Kingdom, but mitigated there by the periodical sales by some of the publishers and by the wide establishment of circulating libraries, clubs and reading societies, were intensified in the colony, where the importation of English editions of new books were confined to a few copies for the use of libraries and wealthy individuals; that the trade of the colony was usually supplied by American reprints of English books, and that any law of copyright to prevent the importation of such reprints could not be enforced, and would be ineffectual even to extend sale of English copies beyond the previously existing demand.

The legislature of Nova Scotia at that time pressed upon Her Majesty's government not only a consideration of the general advantages of literature upon the minds of the people, but the evil tendency of the literature of a foreign and often hostile country like the United States in forming the political opinions and the tastes of the people in the provinces.

On the 27th November, 1845, Lord Stanley, Her Majesty's Principal Secretary for the Colonies, replied to this memorial from Nova Scotia, intimating that the attention of Her Majesty's government was being directed to the state of the copyright law, in order to discover if there were any particulars in which the law might be so amended as to



afford any relief to the colonies "without promising that Parliament would be recommended to alter its determination to afford protection to the authors and publishers of Great Britain of their right of property in their own productions."

On the 13th March, 1846, the legislature of Nova Scotia again adopted a report, which was transmitted to the Right Honourable the Secretary of State for the Colonies.

The report stated that attention had been given by the committee to the despatch of Lord Stanley, dated the 27th November, 1845, and that they were convinced "that the practical effects of the Copyright Act were deprive the people of the colonies of literature whose means rendered them unable to purchase costly books issued from English publishing houses, to diminish the revenue and to encourage smuggling, without producing any corresponding benefit to the author."

These remonstrances drew from the Right Honourable Mr. Gladstone, the Secretary of State for the Colonies, a representation to the publishing trade in England that "they must be induced to modify any exclusive view which might still prevail with regard to this important subject."

At length, on the 19th October, Sir Stafford H. Northcote, by direction of the Lords of the Privy Council for Trade, reviewing the contentions, which had been thus pressed upon the home government by the legislatures of the colonies, made the following recommendation to the colonial office:—

"Under the circumstances my Lords see no course so likely to be successful as that of inviting the colonial legislature themselves to undertake the task of framing such regulations as they may deem proper for securing at once the rights of authors and the interests of the public. My Lords feel confident that they may rely upon the colonies being animated by a sense of justice which will lead them to co-operate with this country in endeavouring to protect the author from the fraudulent appropriation of the fruits of labours upon which he is often entirely dependent, while they entertain a sanguine hope that methods may thus be discovered of accomplishing this important object with the least possible inconvenience to the community.

"I am accordingly directed to request that you will suggest for Lord Grey's consideration whether it might not be desirable to obtain from parliament an Act authorizing the Queen in Council to confirm and finally enact any colonial law or ordinance respecting copyright notwithstanding any repugnancy of any such law or ordinance to the copyright law of this country, it being provided by the proposed Act of Parliament that no such colonial law or ordinance should be of any force or effect until so confirmed and finally enacted by the Queen in Council, but that, from the confirmation and final enactment thereof, the copyright law of this country should cease to be of any force or effect within the colony in which any such colonial law or ordinance had been made in so far as it might be repugnant to, or inconsistent with, the operation of any such colonial law or ordinance.

"I am, etc.,

"STAFFORD H. NORTHCOTE."

The following is the reply of the Colonial Office to the Board of Trade, dated 30th October, 1846:—

*"Colonial Office to the Board of Trade.*

"DOWNING STREET, 30th October, 1846.

"SIR,—I have laid before Earl Grey your letter of the 19th inst., respecting the operation of the imperial law of copyright in the British North American colonies.

"His Lordship directs me to acquaint you, for the information of the Lords of Committee of Privy Council for Trade, that he concurs in the views expressed in your letter on this subject, and that it is, in his opinion, preferable, after the repeated remonstrances which have been received from the North American colonies on the subject of the circulation there of the literary works of this kingdom, to leave to the colonial legislatures the duty and responsibility of enacting the laws which they shall deem proper for securing the rights of authors and the interests of the public.

"Lord Grey, therefore, directs me to request that you would move the Lords of Committee of Privy Council for Trade to take such measures as may be expedient for submitting to the consideration of Parliament in the ensuing session a bill authorizing the Queen in Council to confirm, and finally to enact, any colonial law or ordinance which may be passed respecting copyright, notwithstanding the repugnancy of any such law or ordinance to the copyright law of this country, and containing also the provisions mentioned in your letter in respect to the period at which such colonial law should come into operation.

"I am, etc.,

"B. HAWES."

Thereupon the following circular despatch was sent by Earl Grey to all the governors of the North American colonies:—

*Earl Grey to the Governors of the North American Colonies.*

"DOWNING STREET, November, 1846.

"SIR,—Her Majesty's government having had under their consideration the representations which have been received from the governors of some of the British North American provinces complaining of the effect in those colonies of the imperial copyright law, have decided on proposing measures to parliament in the ensuing session which, if sanctioned by the legislature, will, they hope, tend to remove the dissatisfaction which has been expressed on the subject, and place the literature of this country within the reach of the colonies on easier terms than it is at present. With this view, relying on the disposition of the colonies to protect the authors of this country from the fraudulent appropriation of the fruits of labours upon which they are often entirely dependent, Her Majesty's government propose to leave to the local legislatures the duty and responsibility of passing such enactment as they may deem proper for securing both the rights of authors and the interest of the public. Her Majesty's government will accordingly submit to parliament a bill authorizing the Queen in Council to confirm and finally enact any colonial law or ordinance respecting copyright, notwithstanding any repugnancy of any such law or ordinance to the copyright law of this country; it being provided by the proposed Act of Parliament that no such law or ordinance shall be of any force or effect until so confirmed and finally enacted by the Queen in Council, but that from the confirmation and final enactment thereof, the copyright law of this country shall cease to be of any force or effect within the colony in which any such colonial law or ordinance has been made, in so far as it may be repugnant to, or inconsistent with the operation of any such colonial law or ordinance.

"I have, etc.,

"GREY."

After a lapse of more than forty years, I am charged with the duty of reminding your Lordship that the promise contained in that despatch of Earl Grey has never been fulfilled, and respectfully to ask its fulfilment at the hands of your government. The lapse of time which has intervened has strengthened ten-fold every one of the reasons which induced it to be made. At the date of that despatch responsible government had hardly been established in the North American colonies; now those colonies have had forty years' experience of self-government, and have a united parliament under a most liberal constitution, a parliament possessing great powers and responsibilities, among which is expressly mentioned the subject of copyright.

The experience which has been gained of colonial legislation has, I hope, not lessened the confidence of Her Majesty's government in the disposition of that parliament to deal justly with the interests which have been entrusted to its care, and to carry out the views of Her Majesty's government in matters of imperial policy as far as possible.



Again the inconveniences which were pressed on the consideration of Her Majesty's government 47 years ago by the colonial legislatures have increased, notwithstanding the partial measure of relief which was accorded three years after Earl Grey's despatch, and which permitted the importation of foreign reprints of British copyright works. The price of British publications still exceed six- or seven-fold that for which reprints are purchased in America. The system of circulating libraries and periodical sales, which gives to the British reader the benefit of British literature, has found no place in the colonies, while in Canada the means of reprinting British publications is now, though it was not then, entirely adequate to the wants of the reading public, if it be permitted to carry on operation with a reasonable regard for the interests of British copyright holders.

In part fulfilment of the promise of Her Majesty's government, made known through Earl Grey in the despatch above quoted, the Imperial Statute of 1847 was passed, authorizing Her Majesty by Order in Council to suspend that portion of the Act of 1842 which prohibited the importation of foreign reprints of British copyright works as to any colony in which the proper legislative authority should be disposed to make due provision for securing and protecting the rights of British authors in such possession.

In the years 1846-50 Her Majesty in Council made orders in council suspending the prohibition contained in the Act of 1842 against the importation of such foreign reprints the legislatures of the North American colonies having in the meantime provided for the collection of an impost on such foreign reprints in favour of the author or copyright holder. This partial measure, although not a fulfilment of the promise of Earl Grey, met the principal grievance felt at that time in the North American colonies, namely, the grievance of being deprived of British literature, which could practically only be supplied to the colonies by American reprints, the publishing business of the colonies being then in its infancy.

For a time the complaints of the colonies against the Act of 1842 ceased in consequence of this remedial measure, but for the last 20 years and upwards the operation of the Act of 1842, even with the remedial provisions of 1847, has been seriously felt and has formed the subject of almost constant complaint. In the quarter of a century which followed the Act of 1842, new conditions of trade and commerce developed. The people of the North American provinces had not only become used to self-government, by the liberal policy of Her Majesty's government in giving them free legislative constitutions but they had become more independent of American industries. The necessity for encouraging native industries, instead of relying on those of the United States, had also become very apparent.

The following are instances of the serious inconvenience experienced by the operation of the Imperial Copyright Laws in North America.

The reading public of what is now the Dominion of Canada has been principally supplied with British literature by American reprints. The high prices of British editions have made this unavoidable. In spite of the pointed and repeated warnings to British publishers given by the Colonial Office for 40 years, very little has been done to change this state of things by providing cheap editions of British works. Even to this day the English editions cost from four- to ten-fold the price of American reprints. The result is that the business of publishing British literature for the Canadian reading public is done almost exclusively in the United States. The American publisher, unrestrained by any international copyright law or treaty, is free to reprint any British work and to supply it, not only to the reading public of the United States, but to the reading public of Canada, while the Canadian publisher is not free to reprint any such work on any terms, unless he can obtain the permission of the holder of the copyright in Great Britain. In some noted instances this has actually led to the transfer of printing establishments from Canada to the United States. In other cases, English publishing houses have set up branches in New York or other American cities with the view of reprinting for the United States and Canada the copyright works which they have issued in London.

It has been their interest to establish such branch houses in the United States because they have obtained thereby the American market, whereas in Canada, even with the permission of the holder of the copyright, they would only have the Canadian public for purchasers, and without that permission could not set the type of a single page.

In many other well known instances, American authors in the United States have availed themselves of the restrictions which fetter the publishing trade in Canada under the Imperial Copyright Acts in a manner which is most unjust to British subjects in Canada, and presents in a striking view the arbitrary and oppressive operation of these Acts. They do so in the following manner: The Imperial Copyright Act of 1842 as interpreted by legal decisions, enables any person who resides, even temporarily, in British dominions, to obtain copyright if he publishes his works in the United Kingdom and such copyright has force throughout the empire. "Publishing" has been held not to mean printing necessarily, and residence may be of the most temporary character. The American authors above referred to, for the purpose of preventing their works being reprinted in British dominions, cross the St. Lawrence, reside for a few days within Canadian territory, send to London a few copies of their works ready to be issued there, and thereupon obtain copyright throughout the empire. They then return to their own country, where their works have been printed and copyrighted, and send into Canada those works in the shape of foreign reprints of British copyrights, and on these the Canadian government collects the impost in favour of the American publisher, who thus enjoys copyright in his own country which is not open to any British subject, and enjoys in the British dominions a right of reprinting which no colonist can obtain. While this state of the law is being constantly made use of by American authors, the United States decline to enter into any international agreement with Great Britain and have no interest in making any, because their people can thus use the British Empire for their market without restriction, while offering no advantages in their own market in return. On the contrary, they refuse copyright to any one who is not a citizen of the United States, or who is not able to show residence, in the sense of domicile.

An American publisher, if he desires to make any arrangement with the British copyright holder for the right to reprint the work of the latter, can easily outbid the Canadian publisher, not only on account of the greater facilities he possesses for the production of the book, and not only on account of the more extended market which he has in the United States, but because he will have the Canadian market of 5,000,000 of readers at his command, inasmuch as the Imperial Copyright Acts forbid the reprinting of copyright works, but permits the importation of the American reprints. In many modern instances, the British copyright holder has preferred to sell his right to an American publisher rather than to a Canadian, and has bound himself by the terms of sale to prosecute any Canadian who may reprint his works for sale in Canada, which is the operation which the American sets himself about at once.

The instances in which Canadian publishers have been able to make arrangements with copyright holders in Great Britain have been comparatively few. It is unnecessary to seek for the reason of this. It is not because Canadian publishers are unwilling to make fair terms with the British copyright holder, but because American publishers have greater facilities, and because British authors prefer to deal with publishers in the United States. It is useless to say that it may be made to their interest to deal with the Canadian publishers, or to issue colonial editions. Pressure for forty years by the people of British North America and remonstrances from the colonial offices have been unavailing to change their practice in regard to a policy so entirely prudent as that of providing for the wants of the reading public of British North America.

Having stated these facts, your Lordship, I hope, will appreciate the urgent desire of the Canadian government that a remedy should be applied as soon as possible. If the principal supply for the reading public of Canada must, by virtue of imperial legislation, come from the United States, it follows that the business of publishing for Canada is far more restricted than it ought to be, considering the wants of the people of that country and the means they have of supplying themselves, and it follows that encouragement is continually being given, in an increasing degree, to all those who are engaged in



any of the employments which form part of bookmaking to seek a home for themselves and their families in the United States in preference to Canada? Overweighted as we continually are, by reason of the vast competition of the United States in every branch of trade, industry and commerce, your Lordship will not wonder at our being disposed to complain when, in regard to so important a matter as the furnishing of literature for our people, we are hindered by a monopoly; nominally in favour of the London publishers, but really and practically in favour of the publishers of the United States, and when we are held in that position by virtue of an imperial statute passed nearly half a century ago, when the wants and capabilities of the people of British North America were greatly different from what they are now, when the population of British North America was only a fraction of what is it now, and when the powers of its people, as regards self-government, had only begun to exist, while they are now fully developed.

I proceed now to show that the request which I am urging upon your Lordship, by the direction of the Canadian government, was pressed on Her Majesty's government immediately after the Dominion of Canada was established, has been pressed at many times since, and has always been met in a manner which justifies the hope that compliance with our request will not now be longer delayed.

On the 15th May, 1868, the Senate of Canada passed an humble address to his Excellency the Governor General, as follows:—

“THE SENATE, 15th May, 1868.

“1. To call the attention of Her Majesty's government to the provisions of the Imperial Act 10 and 11 Victoria, c. 95, by which power is given to Her Majesty to approve of any Act passed by the legislature of any British possession, admitting into such possession foreign reprints of British copyright works, provided that reasonable protection to the authors is, in Her Majesty's opinion, thereby secured to them.

“2. To impress upon Her Majesty's government the justice and expediency of extending the privileges granted by the above cited Act, so that whenever reasonable provision and protection shall, in Her Majesty's opinion, be secured to the authors, colonial reprints of British copyright works shall be placed on the same footing as foreign reprints in Canada, by which means British authors will be more effectually protected in their rights, and a material benefit will be conferred on the printing industry of the Dominion.

“Ordered that such members of the privy council as are members of this house do wait on his Excellency the Governor General with the said address.

“Attest.

“F. TAYLOR, *Clerk of the Senate.*”

In June, 1868, Mr. Rose, then Canadian Minister of Finance, being in London, was referred to by the colonial office for information on the subject of this address, and in a memorandum, dated on the 30th of that month, he stated, briefly, the inconveniences which were felt in Canada, and he declared the desire of Canada to be, in accordance with the address of the Senate, that the Canadian publisher be permitted to reprint English copyrights on taking out a license and paying an excise duty, effectual checks being interposed, so that the duty on the number of the copies actually issued from the press should be paid to the Canadian government by such publishers for the benefit of the author.

A letter from the Colonial Office to the Board of Trade stated that consideration ought to be given to the course which should be taken with regard to the recommendation of the Senate of Canada, that colonial reprints of copyrighted works be placed on the same footing as foreign reprints in the Dominion, and that the Duke of Buckingham and Chandos, then Her Majesty's Principal Secretary of State for the Colonies, would be glad to be informed whether the memorandum submitted was sufficient to enable their Lordships of the Board of Trade to form an opinion on this question.

On the 21st July, 1868, his Grace informed the Governor General of Canada that he was in communication with the Board of Trade with regard to the recommendation



of the Senate, and would advise his Excellency of the result as soon as he was placed in possession of their Lordships' views.'

The reply of the Board of Trade, dated 22nd July, 1868, was that the question raised was far too important and involved too many considerations of imperial policy to render it possible to comply with the desire expressed by the address of the Senate that legislation should be obtained during the then present session of Parliament.

It was further stated to be most desirable that the Canadian question should be considered in connection with any negotiations with the United States with regard to copyright. The letter contained the following paragraph, which stated, in substance, the disposal of the question at that time :—

"My Lords, however, fully admit that the anomalous position of Canadian publishers, with respect to their rivals in the United States of America, is a matter which calls for careful inquiry; but they feel that such an inquiry cannot be satisfactorily undertaken without at the same time taking into consideration various other questions connected with the imperial laws of copyright and the policy of the subject be treated as a whole, and that an endeavor should be made to place the general law of copyright, especially that part of it which concerns the whole continent of North America, on a more satisfactorily footing."

The Duke of Buckingham and Chandos, on the 31st July, 1868, sent to the Governor General of Canada the following formal reply :—

"Your Lordship will perceive that any immediate legislation on the matter was impossible, but that the anomalous position of the question in North America is not denied, and that it is admitted that the law of copyright generally may be a very fit subject for future consideration."

On the 9th April, 1869, the government of Canada again moved in the matter transmitted to the colonial office a memorandum by the Minister of Finance, in reply, to the communication from the Board of Trade above referred to, and on the 27th of July, 1869, the Board of Trade made an extended reply, to which I beg to refer your Lordship as showing that the request which had been made from Canada in 1868, and which is still being pressed, was not controverted in its merits, but was deferred in the hope that presently some international arrangement might be made with the United States, and under the impression that it would be unwise to deal with the Canadian question while the probability of such an arrangement was in view. The following passage from that communication bears this out, and sets forth a summary of the conclusions at which the Board of Trade had arrived :—

"Under these circumstances the balance of argument is, in the opinion of the Lords of Trade, against any immediate adoption of the Canadian proposal. The truth is that it is impossible to make any complete or satisfactory arrangement with Canada unless the United States are also parties to it. Whatever protection is to be given to authors on one side of the St. Lawrence must, in order to be effectual, be extended to the other; and it is consequently impossible to consider this question without also considering the prospects of an arrangement between Great Britain and the United States. There are symptoms of the possibility of such an arrangement. In 1853-54 an International Copyright Convention was signed between the two governments, but was allowed to drop. In the last session of the United States Congress, a bill was introduced providing for international copyright in the United States. It required republication and reprinting in the United States as a condition of copyright there, and was in this respect objectionable. But the correspondence showed that there was a considerable interest in the question, and it was evident that the Americans were feeling the want of an international arrangement on the subject."

Accordingly, on the 20th October, 1869, Earl Granville informed the Governor General of Canada that the matter was one of some difficulty, and that Her Majesty's government felt it necessary to obtain further information before deciding the proposal of the Canadian government, but that, in the meantime, action might be taken as to a portion of the imperial law which was not affected by the difficulties surrounding the present question, namely, that while, by the present law, publication in the United

Kingdom gave copyright throughout the empire, publication in a colony could not give rights outside the limits of the colony; and he stated that Her Majesty's government were prepared to take steps, during the next session, to amend the law in that particular.

On the 20th of December, 1869, the Governor General of Canada transmitted a number of documents, one of which was an address which he had received from the typographical union of Montreal, setting out in strong terms the prejudicial effects of the Imperial Copyrights Acts in Canada. His Excellency had promised, in reply, that he would not fail to draw the attention of the Privy Council to the point thus raised.

His Excellency also transmitted, at the same time, a report from the Minister of Finance on the first communication from the Board of Trade above mentioned. The minister remonstrated against the Canadian request being delayed for the action of the United States. He said: "In reference to the second objection urged against the desired change in the law, the undersigned is ready to admit that Canada ought not to ask for and should not expect to receive any privileges which could reasonably be held to prejudice or postpone the satisfactory adjustment of the great question of international copyright between England and the United States. But he is unable to see how the change in the law asked for could have any such effect, especially if it were provided that the privilege accorded to Canadian publishers should be provisional and temporary, to determine on the conclusion of any international treaty of copyright between the two countries.

"Under such limitations would not the granting of the privileges asked for on behalf of Canadian publishers operate rather to bring about the conclusion of an international copyright treaty than to postpone or prevent it? If Canadian publishers were placed on the same footing as their American rivals, the latter would be, to a very great extent, deprived of the pecuniary benefits resulting to them, in the absence of any inter-colonial copyright treaty, from their piracy of the works of English authors."

On the general question, which I have already discussed, the minister made use of the following expressions, which I cite for the purpose of showing that they are not now advanced for the first time to Her Majesty's government, and that those are not newly discovered grievances.

"At present the Canadian public are mainly dependent on the supply even of foreign literature for which a copyright may be obtained in England, on the reprint from the United States.

"It may be urged in answer to these objections that the Canadian publisher may make arrangements with the author for permission to publish; but as the law now stands there is no motive or inducement either for the author to concede, or the publisher to obtain this sanction; the author has already made, or can make, his arrangements with the foreign publisher, who knows that circumstances will give him a large circulation in the Canadian markets, and that even the slight proportion of duty collected will be paid by the Canadian reader, because re-publication there is forbidden.

"At present the foreign publisher, having a larger market of his own, and knowing the advantages of access to the Canadian market, can hold out greater inducements to the author than the colonial publisher, and can afford to indemnify the author for agreeing to forego taking out any copyright and to abstain from printing in Canada."

The minister concluded his report, which had the approval of his Excellency in Council, as follows:—

"Having considered the arguments advanced against the modification of the copyright law asked for in the address of the Senate, the undersigned would recommend that the attention of the imperial authorities be once more invited to the subject, and that they be earnestly requested to accede to the application of the Senate, upon the understanding, if thought proper, that the change in the law, if made, should be temporary, to be determined upon the conclusion of any international copyright treaty between England and the United States.

"In conclusion, the undersigned may be permitted to note the fact that during the last few months the present subject has been very largely discussed in the leading jour-



nals of Canada as well as at public meetings. The public sentiment throughout the country is that the privilege asked for is fair and reasonable in itself, and that the granting of it would not only promote the interests of English authors, but give an impetus to the publishing and printing trade and other cognate branches of Canadian industry, and will be calculated to increase the circulation in Canada of the best British works and to foster the literary tastes and develop the literary talents of the Canadian people."

At this stage the British publishing interests intervened, and pressed upon the Lords of Trade, who in their turn pressed upon the Colonial Office, the propriety of compelling the colonies to accept the modification of the imperial copyright laws, which had just been offered to them without any demand for concession in return, and which was obviously required by the commonest principles of justice, namely, the concession that publication in the colony should be equivalent of publication in Great Britain, on condition only that the colonies should give up their right, accorded under the Act of 1847, to import foreign reprints.

When so little was being conceded in answer to the repeated requests of Canada for the right to supply our people with reprints, it would have been doubtful whether the Canadian government would have expressed its acquiescence in a measure so comparatively unimportant, but when that concession became coupled with a condition which would have made the Imperial Copyright Acts absolutely unbearable and unenforceable, only one reply was possible, and that reply was the one which was transmitted from Canada on the 1st of July, 1870, stating that while there could be no objection to the proposed bill, making publication in the colony equivalent to publication in the United Kingdom, taking into consideration the suggested repeal of the Imperial Copyright Act of 1847, it was highly inexpedient that legislation should take place at that time.

Lord Kimberley requested the Governor General of Canada on the 29th July, 1870, to forward to him a full statement of the views of the Canadian government on the question, in order that it might be considered before the next session.

Accordingly, on the 30th November, 1870, a joint report of the Ministers of Finance and Agriculture was adopted by his Excellency in Council, the substance of which is contained in what here follows:—

"What the undersigned would venture to suggest is, that the duty on the reprints of books first published either in Great Britain or its dependencies, when imported from foreign countries, should be materially increased; and that it should be levied in all cases for the benefit of the author or owner of the copyright, should such exist; and that to prevent evasion of the law a declaration should be required from importers that any works which they may claim to import free of such duty have never been published either in Great Britain or British dependencies; that foreign reprints of works published in Canada should be wholly prohibited; that any author publishing in Canada should be, as at present, protected in his copyright, but that unless British copyright works should be published concurrently in Canada, licensed Canadian publishers should be allowed to publish, paying, for the benefit of the author or owner of the English copyright an excise duty, which should be collected by means of stamps as easily as other duties of a similar kind. The undersigned have no doubt that such a scheme as that which they have suggested could be carried into practical effect with great advantage to the English authors, who, as a rule, would sell their copyrights for Canada to Canadian publishers. It is true that British publishers could not gain the colonial circulation which they have long tried to obtain with success; but it is vain for them to expect that the expensive editions published in England can meet a sale in any part of the American continent.

"The undersigned, therefore, recommend that your Excellency should acquaint Her Majesty's Principal Secretary of State for the Colonies that there is no probability of the Dominion Parliament consenting to any measure for enforcing British copyright in Canada, unless it provide for local publications; and that while the Canadian government will be ready to introduce a measure that will be a great advantage to British authors they must, in reference to the foreign reprints, have regard to the interests of Canadians as well as of British publishers."



In 1872 the government of Canada were still without a definite reply to the request which had been made by the address of the Senate in 1868, and which had been reserved, as above stated, by Her Majesty's government, until further information could be gathered, and until the result of negotiations with the United States might be known.

On the 14th May of that year, the following report of a committee of the Privy Council of Canada was approved by the Governor General and transmitted :—

"On a memorandum dated 10th of May, 1872, from the Honourable the Ministers of Finance and Agriculture, reporting that much anxiety has been manifested by the Houses of the Canadian Parliament on the unsatisfactory state of the Imperial Copyright Act, that, as no reply has yet been received to the approved report of the Committee of the Privy Council, dated 1st December, 1870, they think it desirable that the attention of Her Majesty's government should again be called to the subject.

"That they have reason to believe that a good deal of discussion has taken place in England among the parties interested in copyright, and that the result of that discussion had been a considerable accession to the ranks of those who are in favour of the proposition submitted by them in the report already referred to. That it is apparent that the class which alone has a just claim to protection, viz., authors, have at length been convinced that their interests are not promoted by the maintenance of the present system.

"That it is no doubt true, that the principal owners of the copyright are the London publishers, but it is, they state, equally true that those publishers have never paid the authors one single pound more for their copyrights in view of circulation in Canada.

"That it cannot be denied that the Canadian demand for concurrent publication in Canada should alone entitle the author to the benefit of copyright. That under the present system, which is wholly indefensible, and which is objected to, as well by the English publishers as by Canadian publishers, the latter are treated with the greatest injustice.

"That it has long been the custom for the owners of English copyrights to sell to American publishers advance sheets of their works, and when Canadian publishers have offered to acquire copyright in Canada by purchase, they have been told that the arrangements made between English and American publishers were such as to prevent negotiations with Canadians.

"That Canada has passed a law by which British authors can secure copyright in Canada, and has further expressed a readiness, where authors do not choose to take out copyright, to secure adequate compensation to them by means of an excise tax on all English copyright works for the benefit of the authors.

"They, the ministers, recommend that a further appeal be made to Her Majesty's government to legislate upon the subject without further delay.

"The committee concur in the foregoing report, and submit the same for your Excellency's approval."

In the session of the Canadian Parliament of 1872, a copyright bill was passed, in substance and principle like the Act of 1889. This was reserved by the Governor General for the signification of Her Majesty's pleasure.

In May, 1874, the pleasure of Her Majesty not having been communicated, and in view of the fact that the two years within which the royal assent might be given to it would expire on the 14th of June, 1874, addresses to his Excellency the Governor General were presented by the Senate and the House of Commons respectively, asking him to convey to Her Majesty's Principal Secretary of State for the Colonies the respectful expression of the necessity felt by the Senate and the House of Commons that the bill passed in the session of 1872 should not be allowed to lapse by the expiry of the two years' limitation, specified in the 57th section of the British North America Act of 1867, and begging to assure his Excellency that important interests in the Dominion were prejudiced by the absence of legislation such as that bill contemplated.

The answer was communicated on the 15th of June, 1874, by Lord Carnarvon, stating that the Imperial Act of 1842 was still in force throughout the British dominions, in so far as to prohibit the printing of a book on which copyright subsisted under that Act; and that he had been advised that it was not competent for the Parliament of

Canada to pass such a measure as the Act of 1872, inasmuch as its provisions would be in conflict with imperial legislation, and that he had no alternative but to advise Her Majesty that her assent could not be properly given to the bill.

Lord Carnarvon closed his despatch with the following paragraph, which, I respectfully submit, is a renewal of the promises often made in connection with this subject:—

“I am aware that the subject of colonial copyright has long been under consideration, and that attempts were made by Her Majesty’s late government, in connection with yourself and your ministers, to arrive at a settlement of this difficult and most important question. I will only now express my readiness to co-operate and my confident hope that we may without difficulty be able to agree in the provisions of a measure which, while preserving the rights of the owners of copyright works in this country under the Imperial Act, will give effect to the views of the Canadian government and Parliament.”

Pending the fulfilment of the promises thus renewed by Lord Carnarvon, the Parliament of Canada, in 1795, passed a bill on the subject of copyright in Canada, which was carefully drawn, to avoid as far as possible conflict with imperial legislation. In order to remove any doubts as to the validity of this bill, an imperial statute was passed to authorize its being assented to. This latter is known in Great Britain as the “Canadian Copyright Act of 1875.” It authorized Her Majesty to assent to the reserved bill, but forbade the importation into the United Kingdom of colonial reprints of any work which might be copyrighted in Canada, and for which copyright subsisted in the United Kingdom. It placed, practically, the production of such works in Canada on the same footing as foreign reprints. The Canadian Act of 1875 then received the royal assent.

It is unnecessary that I should refer in detail to this Act, but it may be proper to state that it seems most liberal and fair in its provisions. It permits an author at any time, having printed his book in Canada, to obtain copyright there. It permits the original author’s edition to be imported at all times so that superior and revised editions may always be procured. It established interim copyright, so as to protect a work while passing through the press. It provided for temporary copyright, to cover the case of works published in serial form, and it extended all the privileges of copyright in Canada to any British subject, and to the subjects of any country which had a treaty on this subject with Great Britain, and thus removed one of the objections which had been taken in earlier times to the effect which Canadian copyright legislation might have on negotiations with the United States if such legislation should permit the reprinting of works copyrighted in the United States.

It was felt that, pending the question of the Dominion being free to legislate on the subject of copyright generally, it was important to have a Canadian copyright system, inasmuch as since the Imperial Act of 1842, works published in the United Kingdom had copyright in all the colonies, while for a work published in any one of the colonies it was impossible to obtain copyright in the United Kingdom. Our Act, consequently, gave local copyright, protecting the work printed in Canada, and prevented the importation of republications of any such work, after it should have obtained the local copyright, as the Imperial Act prevented the importation of works which had obtained a British copyright.

I now beg to refer your Lordship to the proceedings of the Copyright Commission of 1876, of which your Lordship was a very prominent member, and in which Canada was represented by the late Sir John Rose. In the portion of the report of that commission which deals with the branch of the subject falling under the head of “Colonial Copyright” some most important statement and recommendations are made.

First, at section 184, it is admitted that “It is highly desirable that the literature of this country should be placed within easy reach of the colonies, and that, with this view, the Imperial Act should be modified so as to meet the requirements of colonial readers.

“In sections 186, 187 and 188 the following passages occur, which I now beg to cite, as confirmation of the narrative which I have given in the early part of this letter, of the effects which immediately followed the Imperial Act of 1842, and as showing that the Canadian government is now but reiterating an oft repeated statement, the truth of which has long been established and admitted :



"186. These means are not available, and indeed are impracticable, owing to the great distance and scattered population in many of the colonies, and until the cheaper English editions have been published the colonial readers can only obtain British copyright books by purchasing them at the high publishing prices, increased as those prices necessarily are by the expense of carriage and other charges incidental to the importation of the books from the United Kingdom.

"187. Complaints of the operation of the Copyright Act of 1842 were heard soon after it was passed and from the North American provinces urgent representations were made in favour of admitting into those provinces the cheaper United States reprints of English works. In 1846 the Colonial Office and the Board of Trade admitted the justice and force of the consideration which had been pressed upon the home government 'as tending to show the injurious effects produced upon our more distant colonists by the operation of the imperial law of copyright' and in 1847 an Act was passed 'to amend the law relating to the protection in the colonies of works entitled to copyright in the United Kingdom.'

"188. The principle of this Act, commonly known as the 'Foreign Reprint Act,' is to enable the colonies to take advantage of reprints of English copyright books made in foreign states, and at the same time to protect the interest of British authors."

The result of the Foreign Reprints Act, is thus stated in sections 193 and 194:—

"193. So far as British authors and owners of copyright are concerned, the Act has proved a complete failure. Foreign reprints of copyright works have been largely introduced into the colonies, and notably American reprints into the Dominion of Canada, but no returns or returns of an absurdly small amount have been made to the authors and owners. It appears from official reports that during the ten years ending in 1876 the amount received from the whole of the 19 colonies which have taken advantage of the Act was only £1,155 13s. 2½d., of which £1,084 13s. 3½d. was received from Canada; and that of these colonies, seven paid nothing whatever to the authors, while six now and then paid small sums amounting to a few shillings.

"194. These very unsatisfactory results of the Foreign Reprint Act and the knowledge that the works of British authors, in which there was copyright not only in the United Kingdom but also in the colonies, were openly reprinted in the United States and imported into Canada without payment of duty, led to complaints from British authors and publishers, and strong efforts were made to obtain the repeal of the Act."

The request which I have been pressing in this letter and the grievances which the Canadian Copyright Act of 1889 was intended to remove are thus summarized in section 195 and the two following.

"195. A counter complaint was advanced by the Canadians. They contended that although they might still import and sell American reprints on paying the duty, they were not allowed to republish British works and to have the advantage of the trade the sale of which was, in effect, secured for the Americans. In defence of themselves against the charge of negligence in collecting the duty, they alleged that owing to the vast extent of frontier and other causes and also from the neglect of English owners of copyright to give timely notice of copyright works to the local authorities, they had been unable to prevent the introduction of American reprints into the Dominion.

"196. The Canadians proposed that they should be allowed to republish the books themselves, under licenses from the Governor General, and that the publishers so licensed should pay an excise duty of 12 per cent for the benefit of the authors. It was alleged that by these means the Canadians would be able to undersell the Americans so effectually as to check smuggling; and further, that the British author would be secured his remuneration, as the money would be certain to be collected in the form of an excise duty, though it could not be collected by means of the customs. Objections, however, were made to the proposal, and it was not carried out.

"197. These considerations led to the suggestion that republications should be allowed in Canada under the author's sanction, and copyright granted to the authors in the Dominion; and upon this a question arose whether Canadian editions, which would



be probably much cheaper than the English, should be allowed to be imported into the United Kingdom and the other colonies."

The report then proceeded to state the substance of the Canadian Act of 1875, and intimated, what was no doubt correct, that too short a time had elapsed, since its sanction, to ascertain its full effect.

In sections 206, 207 and 208, the following liberal recommendations were made in favour of the colonies:—

"206. We recommend that the difficulty of securing a supply of English literature at cheap prices for colonial readers be met in two ways: 1st by the introduction of a licensing system in the colonies; and 2nd, by continuing, though with alterations, the provisions of the Foreign Reprint Act.

"207. In proposing the introduction of a licensing system, it is not intended to interfere with the power now possessed by the colonial legislatures of dealing with the subject of copyright work, so far as their own colonies are concerned. We recommend that, in case the owner of a copyright work should not avail himself of the provisions of the copyright law (if any) in a colony, and in case no adequate provisions be made by republication in the colony or otherwise, within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the colony, a license may, upon application, be granted to republish the work in the colony, subject to a royalty in favour of the copyright owner of not less than a specified sum per cent, on the retail price, as may be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should be made by such law.

"208. We do not feel that we can be more definite in our recommendation than this, nor indeed do we think that the details of such a law could be settled by the imperial legislature. We should prefer to leave the settlement of such details to special legislation in each colony."

I am unable to find that these recommendations were dissented from by any member of the commission, even by the gentleman who represented the Copyright Association of Great Britain and whose letter is annexed to your Lordship's dispatch of the 25th March last.

The report seems to have been concluded on the 25th May, 1878, but the recommendations which I have noted, like so many others in favour of the colonies on the subject of copyright, have unfortunately not been carried into execution.

Your Lordship cannot then be surprised that—after Earl Grey's promise more than 40 years ago, and after more than 22 years of agitation on the part of Canada, by addresses from both branches of our parliament, by memorandum from our Ministers of Finance and Agriculture, by minutes of council and by statutes passed unanimously in both Houses, introduced by three successive governments, representing opposite political opinions, and with encouragements held out at every stage of the agitation, to expect a reasonable and favourable consideration of our representations by Her Majesty's government—the Canadian Parliament believed in 1889 that the Act then passed to give effect to what had so often been asked for, to what had never been refused, and to what had been recommended by the highest authorities in Great Britain, after most mature deliberation, should receive a favourable consideration at the hands of Her Majesty's government, when the government of Canada asked for the assent of Her Majesty's government to the issue of a proclamation to bring it in force.

I respectfully refrain from discussing here the legal difficulties by which your Lordship has been impressed as to the power of the Parliament of Canada to pass such an Act, because I understand that I have your Lordship's permission to discuss that subject separately, and because it in no way relates to the principle under discussion on this occasion.

Hitherto it has always been either assumed on the part of Canada and Great Britain or distinctly asserted on the part of Great Britain, that Canada had not the power to pass such an Act, but hope has always been held out that Canada should obtain the power, and I therefore submit that if your Lordship should continue to be of

the opinion that the power does not exist, you will promote legislation to set that question finally at rest by conferring the powers; and that, if you should be of the opinion, that the power may exist, you will advise Her Majesty to consent to the issue of a proclamation to bring the Act of 1889 into force, under the assurances which have been offered, that a most respectful consideration will be given to any suggestions for the improvement of the measure which your Lordship may think proper to make, after hearing all that may be advanced on both sides.

In the despatch of the 25th March, your Lordship suggested that the government of Canada would doubtless fully consider whether it would not be well and be desirable to leave the law as it now stands until it should be seen what action would be taken in the United States on the subject of copyright. The action of the United States has since been announced. It is the action which has followed every attempt to establish a copyright arrangement with the United States during the last 25 years. The only measure which has ever been offered in the United States Congress looking to international arrangement or forming, in any way, the basis for international arrangement, has exacted as an indispensable condition to American copyright (whether treaty or statutory) reprinting in the United States. Those who are most intimately acquainted with the state of public opinion in that country, are confident that that condition will never be dispensed with. We have seen that every measure looking to an international arrangement, even with that condition included, and even the measure which was pending when your Lordship's despatch was written, has been rejected by Congress.

It is not too much then, I hope, to ask that a final decision of the case of Canada should no longer be postponed to await the action of the United States.

Permit me to add, in this regard, a repetition of two points which I have already hinted at:—

1. That the present policy of making Canada a market for American reprints, and closing the Canadian press for the benefit of the American press, in regard to British copyright works, has a direct tendency to induce the United States to refuse any international arrangement.

2. That inasmuch as the existing Canadian copyright law affords protection to the copyright holder in every country which may make a treaty with Great Britain, it cannot be suggested, as it once was, that self-government in Canada on this subject would in the least impede negotiations with the United States for an international arrangement.

I have, &c.,

JOHN S. D. THOMPSON,  
*Minister of Justice for Canada.*

*Lord Knutsford to the Governor General.*

DOWNING STREET, 8th November, 1890.

MY LORD,—With reference to your despatch No. 100, of the 28th August, I have the honour to transmit to you, to be laid before your ministers, for any observations that they may wish to offer, a copy of a letter from the Incorporated Society of Authors, respecting the proposed Canadian copyright legislation.

I have, &c.,

KNUTSFORD.

*The Society of Authors to the Colonial Office.*

4, PORTUGAL STREET, LINCOLN'S INN FIELDS, LONDON, W. C., 3rd Nov., 1890.

MY LORD,—In answer to the letter from Sir Robert Herbert of the 17th September, 1890, I have the honour to inform your Lordship that a meeting of the general

committee of the Incorporated Society of Authors, including the sub-committee on copyright, has been told to consider the questions raised by Sir J. Thompson in his report to your Lordship of July 14th, 1890. I am directed by the committee to inform your Lordship as follows :—

(1.) They can express no opinion on the question of the general policy which Her Majesty's government may think fit to adopt towards Canada with regard to the question of copyright.

(2.) They hope, however, that if Her Majesty's government think fit to undertake legislation in order to give effect to the principles of the Canadian Copyright Act, such legislation will embody due precautions for making the collection of royalty charges really efficient.

(3.) They submit that the clauses relating to the collection of royalty charges as drafted in the Canadian Copyright Act, 52 Vic., c. 29, are not sufficient for the proper collection thereof, and

(4.) It appears to the committee to be doubtful whether the Canadian Copyright Act, 52 Vic., c. 29, does not purport to abolish copyright altogether, unless the person entitled thereto reprints or republishes in Canada within one month after printing or publishing elsewhere. At best the language of the Act is ambiguous on this point.

I have, &c.,

W. OLIVER HODGES.

*Lord Stanley of Preston to Lord Knutsford.*

GOVERNMENT HOUSE, OTTAWA, 20th December, 1890.

MY LORD,—With reference to previous correspondence on the subject of the Act passed by the Parliament of Canada in 1889, entitled: "An Act to amend the Copyright Act," and to your Lordship's despatch of the 8th ultimo, forwarding a copy of a letter from the Society of Authors on the copyright question, I have the honour to inclose a copy of an approved minute of the Privy Council concurring in a report by the Minister of Justice, who suggests the passing of Imperial legislation which shall authorize the Canadian Parliament to deal with the question of copyright notwithstanding any such legislation heretofore passed in relation to this subject. Your Lordship will observe also that the minister in his report deals fully with the points raised in the letter inclosed in your Lordship's dispatch above mentioned.

I have, &c.,

STANLEY OF PRESTON.

CERTIFIED COPY of a Report of a Committee of the Honourable the Privy Council approved by His Excellency the Governor General in Council on the 18th December, 1890.

The committee of the Privy Council have had under consideration a report dated 15th December, 1890, from the Minister of Justice calling attention to a minute of Council approved by your Excellency under date the 17th August, 1889, on the subject of an Act passed by the Parliament of Canada in the session of that year, entitled: "An Act to amend the Copyright Act."

The committee concurring in the said report advise that your Excellency be moved to forward a copy to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,

*Clerk, Privy Council.*



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*Report of the Honourable the Minister of Justice.*

*To His Excellency the Governor General in Council.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th December, 1890.

The undersigned has the honour to call your Excellency's attention to the report which he made to your Excellency on the 3rd August, 1889, on the subject of an Act passed by the Parliament of Canada in the session of that year, entitled: "An Act to amend the Copyright Act."

The Act referred to has not yet been brought into operation, as it awaits the signification of the pleasure of Her Majesty's government that a proclamation should be issued by your Excellency to bring it into force.

In the same connection, the undersigned begs to call your attention to the despatch from Lord Knutsford to your Excellency, dated 25th March, 1890, in which his Lordship is pleased to signify a desire that the matter should be further considered by your ministers, and in which his Lordship concluded by expressing every desire to assist as far as possible in any well-considered measure which would substantially preserve the rights of copyright holders under the Imperial Act, and would at the same time meet the wishes of the Canadian people.

In the month of July, 1890, the undersigned had the honour personally to press upon the attention of Lord Knutsford the arguments in favour of the position assumed in the report of the undersigned of the 3rd August, 1889, both as to the powers of the Parliament of Canada and as to the reasons why such an Act as the Copyright Act of 1889, should be adopted and be allowed to go into operation.

By permission of his Lordship the views which were then pressed upon this consideration were expressed in writing in a letter from the undersigned to his Lordship, dated 14th July, 1890, and the views set forth in that letter were approved by your Excellency in Council on the 7th August last.

The undersigned has had referred to him, in this connection, a despatch from Her Majesty's Principal Secretary of State for the Colonies, dated 8th November last, transmitting a letter to his Lordship from Mr. W. Oliver Hodges, honorary secretary of the copyright committee of the Society of Authors, in answer to a letter from Sir Robert Herbert, of the 17th September, 1890.

Mr. Herbert informs Lord Knutsford that a meeting of the general committee of the Incorporated Society of Authors, including the sub-committee on copyright, had been held to consider the questions raised by the undersigned in his letter to Lord Knutsford, of the 14th July, 1890, and he states that he was directed by the committee to inform his Lordship that, while they could express no opinion on the question of the general policy which Her Majesty's government might think fit to adopt towards Canada with regard to the question of copyright, they hoped that if Her Majesty's government should think fit to undertake legislation in order to give effect to the principles of the Canadian Copyright Act, such legislation would embody due precautions for making the collection of royalty charges really efficient. They submitted that the clauses relating to the collection of such charges contained in the Canadian Copyright Act of 1889, were not sufficient for the proper collection thereof, and it appeared to the committee doubtful whether the Act did not propose to abolish copyright altogether, unless the person entitled thereto should reprint or republish in Canada under its provisions.

The undersigned has now the honour to recommend that an earnest request be made to Her Majesty's Principal Secretary of State for the Colonies that such legislation be brought before the Parliament of the United Kingdom at its present session as may set at rest the questions which have arisen as to copyright in Canada. In making this request your Excellency's government do not recede from the position which was taken in the report of the undersigned, dated 3rd August, 1889, which report was duly approved by your Excellency in Council, but, inasmuch as doubts have been raised as to the power of the Parliament of Canada to pass the Act, it must be desirable and

necessary that such doubts should be removed by Imperial legislation. The most satisfactory form, to Canada, in which such legislation should be presented would be by an Act declaring the full authority of Canada to legislate with regard to copyright in this country, notwithstanding Imperial legislation heretofore passed in relation to that subject. Such an Act would be only following the lines of the British North America Act and would only be in accordance with the promises made by Her Majesty's ministers from time to time, as set forth in the letter of the undersigned, to Lord Knutsford, of the 14th July.

It would, in the opinion of the undersigned, in view of the doubts which have been expressed, be most desirable that the Canadian Copyright Act of 1889 should also be ratified and confirmed by Imperial legislation.

As regards the objections to the Copyright Act of 1889, stated by Mr. Hodges, the undersigned concurs that great care should be taken to make the collection of royalty charges really efficient. The opinion indicated in the letter of Mr. Hodges, that the clauses relating to such collection which are contained in the Act referred to are not sufficient, does not probably make due allowance for the fact that regulations are to be made on that subject by your Excellency in Council, so soon as the Act shall come into force, under the powers conferred by the fourth section. In the approved report of the undersigned, dated the 3rd day of August, 1889, it was stated that "the government of Canada would be prepared to submit to Her Majesty's government the regulations which might be adopted under the Act for securing the collection of the royalty and the payment thereof to the proper parties." The undersigned is unable to agree with Mr. Hodges that the effect of the Act of 1889, may be to "abolish copyright altogether unless the person entitled thereto reprints or republishes in Canada." The Act merely deals with the subject of the reprinting of copyrighted works, under license, and will not be found, on careful perusal, the undersigned believes, to affect the rights of the holders of copyright in any other particular. Besides this, section 6 preserves the rights of those who may have a copyright, when the Act shall come into force, from being affected even to this extent.

On the points mentioned in the letters of Mr. Hodges, there can be no disagreement between your Excellency's government and the society which that gentleman represents as to the recognition of the rights of the holders of copyright and as to the necessity for making the Act effective.

The undersigned recommends that a copy of this report, if approved, be transmitted to Her Majesty's Principal Secretary of State for the Colonies.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Lord Knutsford to the Governor General.*

DOWNING STREET, 18th March, 1891.

MY LORD,—With reference to your despatch No. 237 of the 20th December, 1890, I have to acquaint you that the whole subject of Canadian copyright has been under consideration, but that Her Majesty's government thought that it would, on the whole, be desirable to delay replying to that despatch until it was seen how the copyright question would be finally dealt with in the United States.

Your ministers will doubtless also wish to consider the probable effects in Canada of that legislation.

I have, &c.,

KNUTSFORD.

*Lord Stanley of Preston to Lord Knutsford.*

GOVERNMENT HOUSE, OTTAWA, October 19, 1891.

MY LORD,—I have the honour to transmit to your Lordship, with a request that it may be laid at the foot of the throne, an address to Her Most Gracious Majesty the Queen, from the Senate and House of Commons of Canada praying for Imperial legislation conferring upon the Parliament of Canada power to legislate in the interests of the people of the Dominion on all matters relating to the subject of copyright; and praying that notice may be given by Her Majesty's government of the withdrawal of Canada from the Berne Copyright Convention.

I have, &c.,

STANLEY OF PRESTON.

*To the Queen's Most Excellent Majesty.*

MOST GRACIOUS SOVEREIGN,—We, your Majesty's most dutiful and loyal subjects, the Senate and Commons of Canada in Parliament assembled, humbly beg leave to approach Your Majesty for the purpose of representing:

That by the statute of your Majesty's Parliament (5 & 6 Vict. c. 45) the privilege of copyright was given to any person who should publish a literary work in the United Kingdom if he should be a subject of your Majesty or a resident of any part of Your Majesty's dominions, and the republication within the Empire and the importation into the Empire of any copyrighted work was prohibited.

The operation of the above-mentioned Act was attended with great inconvenience to the people of the North American colonies and formed the subject of formal remonstrances from several of their legislatures.

These remonstrances were replied to by a circular despatch from Earl Grey (then your Majesty's Principal Secretary of State for the Colonies) directed to all the governors of the North American colonies. The circular was in the words following:—

DOWNING STREET, November, 1846.

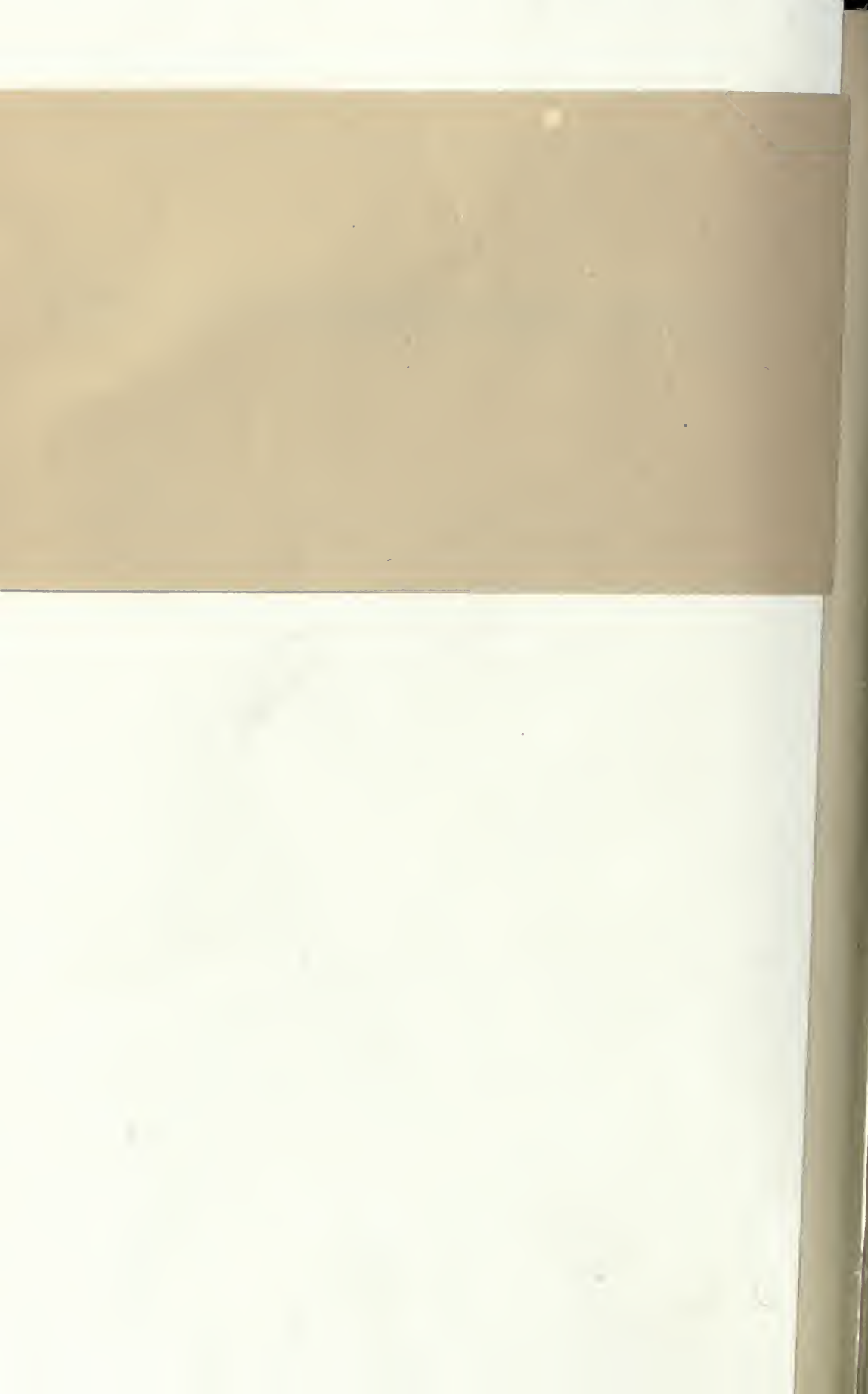
SIR,—Her Majesty's government, having had under their consideration the representations which have been received from the governors of some of the British North American Provinces complaining of the effect in those colonies of the Imperial Copyright Law, have decided on proposing measures to Parliament in the ensuing session which, if sanctioned by the legislature, will, they hope, tend to remove the dissatisfaction which has been expressed on this subject, and place the literature of this country within the reach of the colonies on easier terms than it is at present. With this view, relying upon the disposition of the colonies to protect the authors of this country from the fraudulent appropriation of the fruits of labours upon which they are so often entirely dependent, Her Majesty's government propose to leave to the local legislatures the duty and responsibility of passing such enactment as they may deem proper for securing both the rights of authors and the interests of the public. Her Majesty's government will accordingly submit to Parliament a Bill authorizing the Queen in Council to confirm and finally enact any colonial law or ordinance respecting copyright, notwithstanding any repugnancy of any such law or ordinance to the copyright law of this country; it being provided by the proposed Act of Parliament that no such law or ordinance shall be of any force or effect until so confirmed and finally enacted by the Queen in Council, but that from the confirmation and final enactment thereof the copyright law of this country shall cease to be of any force or effect within the colony in which any such colonial law or ordinance has been made in so far as it may be repugnant to, or inconsistent with, the operation of any such colonial law or ordinance.

I have, &c.,

GREY.







The intention of your Majesty's government, as expressed in this circular, has never been carried into effect. The importation from foreign countries of works copyrighted in the United Kingdom was permitted under certain conditions, but the republication of such works in the colonies, even under any conditions as regards the holders of copyright, has never been permitted, nor has the right of the legislatures of the provinces or of the Dominion of Canada to make enactments to regulate the law of copyright been recognized by your Majesty's government, unless such enactments could be shown to be consistent with and subordinate to the Act of the United Kingdom before mentioned.

Your Majesty's Parliament, in the year 1867, in establishing the Dominion of Canada, gave to its Parliament very extensive powers of government, including the right to legislate on this important subject. The Parliament of Canada has enacted several statutes regulating the law of copyright for Canada. These statutes adopted the provisions which the interests and welfare of the people of this country, as connected with this matter, seemed to require, and at the same time gave liberal protection to the interests of all such persons as had acquired, or might acquire, copyright in the United Kingdom. These statutes have always been regarded by your Majesty's government, however, as requiring sanction by the Parliament of the United Kingdom, and the most recent of them—passed in Canada in the year 1889—remains inoperative for want of the assent of your Majesty's government to a proclamation which will bring it into force.

The provision of the Act of 1889 just mentioned are such as are required in the interests of the people of Canada, and its provisions have not been shown to be in any way unfair as regards any portion of your Majesty's subjects. The Act was passed unanimously by both Houses of the Parliament of Canada, and has been earnestly pressed by the government of Canada upon the favourable consideration of your Majesty's government.

While your memorialists hold the view that such a statute is within the competence of the Parliament of Canada, under the British North America Act, they have been informed that doubts upon that subject have been raised, and they humbly submit that such doubts should be removed by statute of your Majesty's Parliament, giving effect to the Canadian Copyright Act at once, and confirming the right of the Parliament of Canada, according to the promise made by your Majesty's government in 1846, to make laws on the subject of copyright as may from time to time be required for the country, notwithstanding that such laws may be inconsistent with the provisions of Imperial statutes passed before adoption of the British North America Act of 1867.

Your memorialists beg to call attention to the fact that your Majesty's Royal Commissioners on Copyright, in the year 1876, recommended that the colonial legislatures should be given the right to pass statutes embodying principles precisely the same as those which form the basis of the Canadian Act of 1889 before referred to.

We, therefore, humbly pray, that your Majesty will be graciously pleased to invite such legislation in the Parliament of the United Kingdom as will remove the doubts hereinbefore referred to, and explicitly confer upon the Parliament of Canada the power to legislate in the interests of the people of the Dominion on all matters relating to the subject of copyright, without regard to the statutes which may have been in force when the Parliament of Canada was established.

We further pray that, in order to give effect to the Act of the Parliament of Canada of 1889 aforesaid, notice may be given by your Majesty's government of the withdrawal of Canada from the Berne Copyright Convention.

JOHN ROSS,

*Speaker of the Senate*

P. WHITE,

*Speaker of the Commons.*

THE SENATE, Wednesday, 30th September, 1891.

HOUSE OF COMMONS, Tuesday, 29th September, 1891.

(For balance of Despatches, Orders in Council, &c., on subject of Copyright see Appendix.)



## 39 Victoria (1876).

## MERCHANTS' SHIPPING ACT (IMPERIAL).

Todd, in his work on *Parliamentary Government in the British Colonies* (2nd edition, 1894, at pp. 183 and 184) says :—

"The Imperial Merchant Shipping Act of 1876 contains certain general provisions applicable to vessels trading with Canada. But the 44th section of this Act declares that the regulations in respect to deck cargoes shall not apply to ships engaged in the coasting trade of any British possession, and that no part of the Act shall apply to any vessel trading exclusively in colonial inland waters. In 1878, however, a bill was passed through the Dominion Parliament to repeal, as respects all ships while in the waters of Canada, from and after the time which may be fixed for that purpose by a proclamation, issued by Her Majesty in Council, the 23rd section of the said statute, which regulates the space occupied by deck cargoes which shall be liable for tonnage dues. This Act was not allowed by Her Majesty's government, inasmuch as it claimed to legislate, not merely for Canadian shipping, and for the vessels especially exempted by the 44th section above mentioned, from the operation of the Imperial Act, likewise for 'all ships' while in Canadian waters. Such a provision was obviously in excess of the powers of the Canadian Parliament. In making known to the Canadian government their disapproval of this Act, the Imperial Board of Trade suggested that another Act might be passed on the subject, but limited in its operations to ships over which the Dominion government could exercise control." (Private information received from the Department of Marine and Fisheries, March, 1879.)

"In 1879 the Canadian Parliament passed another Act (42 Vic., chap. 24) respecting the tonnage of ships, which was expressly limited to vessels amenable to Canadian law. (See also 43 Vic., chap. 20, sec. 13.) Upon the same principle the Colonial Secretary, in a despatch to the Governor of New Zealand, dated 3rd May, 1878, whilst admitting that, so far as relates to communication with the shore and with the shipping in colonial waters, Her Majesty's ships should be subject to local quarantine regulations in the same manner as merchant ships, yet desired that instructions might be issued by the government of the colony to forbid the local authorities in any way to interfere with the internal management of Her Majesty's ships, or with their freedom to proceed to sea whenever the officer in command may deem such course requisite." (New Zealand Parliamentary Papers, 1878. App. A. 2, p. 19.)

## 49 Victoria (1886).

## AN ACT FURTHER TO AMEND THE ACT RESPECTING FISHING BY FOREIGN VESSELS.

Reserved for Her Majesty's pleasure 2nd June, 1886. Royal Assent given 26th November, 1886. Proclamation dated 24th December, 1886.

For balance of Despatches, Orders in Council, &c., respecting Imperial Supervision over Dominion Legislation, see Appendix B, pages 1314-1323.





## DIVORCE BILLS.

## 31 Victoria (1867) Chap. 95.

AN ACT FOR THE RELIEF OF FREDERICK WHITEAVES.

*Reserved for Her Majesty's pleasure, 22nd May, 1868. Royal assent given 7th July, 1868. Proclamation dated 26th September, 1868.*

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## 32 &amp; 33 Victoria (1869) Chap. 75.

AN ACT FOR THE RELIEF OF JOHN HORACE STEVENSON.

*Reserved for Her Majesty's pleasure, 22nd June, 1869. Royal assent given 7th October, 1869. Proclamation dated 20th November, 1869.*

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## 36 Victoria (1873) Chap. 126.

AN ACT FOR THE RELIEF OF JOHN ROBERT MARTIN.

*Reserved for Her Majesty's pleasure, 23rd May, 1873. Royal assent given 17th July, 1873. Date of Proclamation, 18th August, 1873.*

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## 38 Victoria (1875) Chap. 98.

AN ACT FOR THE RELIEF OF HENRY WILLIAM PETERSON.

*Reserved for Her Majesty's pleasure, 8th April, 1875. Royal assent given 28th June, 1875. Date of proclamation, 8th August, 1875.*

## 40 Victoria (1877).

CHAP. 87. AN ACT FOR THE RELIEF OF MARY JANE BATES.

CHAP. 88. AN ACT FOR THE RELIEF OF WALTER SCOTT.

CHAP. 89. AN ACT FOR THE RELIEF OF MARTHA JEMIMA HAWKSHAW HOLIWELL.

*Reserved for Her Majesty's pleasure, 28th April, 1877. Royal assent given 13th August, 1877. Date of proclamation, 5th September, 1877.*

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## 41 Victoria (1878).

CHAP. 46. AN ACT FOR THE RELIEF OF HUGH HUNTER.

CHAP. 48. AN ACT FOR THE RELIEF OF VICTORIA ELIZABETH LYON.

CHAP. 48. AN ACT FOR THE RELIEF OF GEORGE FROTHERINGHAM JOHNSTON.

*Reserved for Her Majesty's pleasure, 10th May, 1878. Royal assent given 20th June, 1878. Date of proclamation, 17th August, 1878.*

NOTE.—Since the change in the instructions to the Governor General of Canada in 1878, by the omission of any directions respecting the reservation of bills, it has not been the practice to reserve Divorce Bills for the signification of Her Majesty's pleasure. Accordingly, chapter 79 of 42 Victoria, 1879, was assented to by the Governor General without reservation.

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POWERS OF DOMINION GOVERNMENT RESPECTING DISALLOWANCE  
OF PROVINCIAL ACTS.

CORRESPONDENCE, Reports of the Minister of Justice and Orders in Council,  
upon the subject of the powers of the Dominion Government with  
respect to the disallowance of Acts of the Provincial Legislatures.

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*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor  
General in Council on the 9th June, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th June, 1868.

The undersigned begs to submit for the consideration of your Excellency, that it is expedient to settle the course to be pursued with respect to the Acts passed by the provincial legislatures.

The same powers of disallowance as have always belonged to the Imperial Government with respect to the Acts passed by colonial legislatures, have been conferred by the Union Act on the Government of Canada. Of late years Her Majesty's Government has not, as a general rule, interfered with the legislation of colonies having representative institutions and responsible government, except in the cases specially mentioned in the instructions to the governors, or in the matters of imperial and not merely local interest.

Under the present constitution of Canada, the general government will be called upon to consider the propriety of allowance or disallowance of provincial Acts much more frequently than Her Majesty's Government has been with respect to colonial enactments.

In deciding whether an Act of a provincial legislature should be allowed or sanctioned, the government must not only consider whether it affects the interest of the whole Dominion or not; but also, whether it be unconstitutional, whether it exceeds the jurisdiction conferred on local legislatures, and in cases where the jurisdiction is concurrent, whether it clashes with the legislation of the general Parliament.

As it is of importance that the course of local legislation should be interfered with as little as possible, and the power of disallowance exercised with great caution, and only in cases where the law and the general interests of the Dominion imperatively demand it, the undersigned recommends that the following course be pursued:

That on receipt, by your Excellency, of the Acts passed in any province, they be referred to the Minister of Justice for report, and that he, with all convenient speed, do report as to those Acts which he considers free from objection of any kind, and if such report be approved by your Excellency in Council that such approval be forthwith communicated to the provincial government.



That he make a separate report, or separate reports, on those Acts which he may consider :—

1. As being altogether illegal or unconstitutional ;
2. As illegal or unconstitutional in part ;
3. In cases of concurrent jurisdiction, as clashing with the legislation of the general parliament ;
4. As affecting the interests of the Dominion generally :

And that in such report or reports he gives his reasons for his opinions.

That, where a measure is considered only partially defective, or where objectionable, as being prejudicial to the general interests of the Dominion, or as clashing with its legislation, communication should be had with the provincial government with respect to such measure, and that, in such case, the Act should not be disallowed, if the general interests permit such a course, until the local government has an opportunity of considering and discussing the objections taken, and the local legislatures have also an opportunity of remedying the defects found to exist.

All of which is respectfully submitted.

JOHN A. MACDONALD.

*The Governor General to the Secretary of State for the Colonies.*

GOVERNMENT HOUSE, OTTAWA, CANADA, 11th March, 1869.

MY LORD,—I beg leave to draw your attention to the following remarks which a reference to my despatch, No. 22, of this date, will show have already derived colour from actual occurrences, and which point to the probability of misapprehension and future difficulty, if a remedy be not speedily devised and applied, for the prevention of uncertainty and probable conflict between rival authorities.

Previous to the union of the provinces, the governor of each province either assented to, or withheld Her Majesty's assent to, or reserved for Her Majesty's assent, such bills passed by the legislature as he thought proper, and he was specially enjoined by the royal instructions to reserve certain classes of bills therein specified. The same practice is continued by the Union Act with respect to the legislation of the Parliament of Canada.

The Act provides that the lieutenant governor of each province may reserve bills for the consideration of the Governor General, but there is no provision by which the latter is to take Her Majesty's pleasure on such legislation. The royal instructions are also silent on this point. In the absence of instructions, I presume that I should exercise the power of assent to, or reservation of, bills, under the advice of the Privy Council of this Dominion.

Now, although the powers of the provincial legislatures are considerably more limited, than those possessed by the same legislatures before the union, yet they have jurisdiction in many cases to which the royal instructions would seem to apply : I mean that a provincial legislature may pass a bill under the present constitution which, if it were passed by the Parliament of the Dominion, would have to be reserved under my instructions.

If the 7th paragraph of the instructions be examined, it will be seen that it is quite competent for a local legislature to pass bills coming within the 2nd, 5th, 6th, 7th and 8th clauses therein mentioned. Again, doubts have already arisen as to the respective jurisdictions of the local and general legislatures.

The local legislatures are naturally inclined to legislate on the same subjects of public interest, and to the same extent as they did before the union ; and, in case of doubt, to give themselves the benefit of the doubt, and construe their powers in the larger sense.

I am informed, however, that on the whole, the local legislation has been satisfactory, and I think there will be little difficulty in managing any questions that may arise, if some principle of action be laid down by Her Majesty's Government, and steadily adhered to.

At present, *novitate regni*, of the Dominion, and while it has no associations, political or historical, no buttresses of prestige and tradition, a difficulty is likely to be more felt, and more serious than probably it will be in after times.

As yet, the tendency of public men must naturally be to look, as heretofore, rather to sectional than to general interests. By degrees, no doubt, this provincialism will wear away; but, in the meantime, and under the circumstances, questions of moment having already arisen, it would, I submit be desirable, in a public point of view, as well as satisfactory to myself, to have some specific instructions in my capacity, as an imperial officer, as to my course:

1st. When an Act of a provincial legislature relates to any of the classes of subjects mentioned in the 7th paragraph of the royal instructions.

2nd. When it is, in my opinion, unconstitutional, or in excess of the power of the local body.

I would beg leave to suggest that until the legislation of several years of the general and local bodies has practically settled their respective jurisdictions, it would be well for me to transmit annually to the Colonial Office the sessional volumes of statutes passed by each of them, with a report from the Minister of Justice, and such remarks as may occur to myself to be deserving your attention.

It is worthy of consideration whether it would not be expedient to establish a tribunal with powers analogous to those of the Supreme Court of the United States, for the decision of all questions of constitutional law and conflict of jurisdiction.

The British North America Act (sec. 101) empowers the Parliament of Canada to establish a General Court of Appeal; but I am advised that imperial legislation will be required to enable the Dominion Parliament to establish a court with original jurisdiction over such subjects.

The organization of a Court of Appeal is, I am told, likely to engage the attention of the Parliament here, at the coming session, and that then the whole subject of the best means of determining these respective jurisdictions, and of settling constitutional questions generally, will probably be discussed in all its bearings. I propose, in such case, to address you again on the subject.

I have, &c.,

JOHN YOUNG.

*Earl Granville to Sir John Young.*

DOWNING STREET, 8th May, 1869.

SIR,—I have the honour to acknowledge the receipt of your despatch, No. 23, of the 11th ultimo, asking for instructions as to the course which you should pursue with regard to any Act of the provincial legislatures, which might relate to any of the classes of subjects mentioned in the seventh paragraph of the royal instructions, or which might, in your opinion, be unconstitutional, or in excess of the power of the local body.

The prohibitions in the seventh paragraph of royal instructions, with one qualification, rest on grounds of imperial policy, and therefore the Governor General of the Dominion is not at liberty, even on the advice of his ministers, to sanction or assent to any provincial law in violation of them. He would indeed be bound to instruct the Lieutenant-Governor of the province not to give such assent.

The qualification to which I have above referred is this, that, while the Governor General is not at liberty to sanction the passing of a law making any donations or gratuity to himself, it would be for his ministers to consider whether they should advise him to consent to a donation by the province to the Lieutenant-Governor, and he would be at liberty to follow that advice.

With regard to the second point : If the Governor General were advised by his ministry to disallow any provincial Act as illegal or unconstitutional, it would, in general, be his duty to follow that advice, whether or not he concurred in their opinion. If he were advised by his ministry to sanction any Act which appeared to him illegal, it would be his duty to withhold his sanction and refer the question to the Secretary of State for instructions.

The same course might be taken if the Act recommended for his sanction by his ministers appeared gravely unconstitutional ; but it is impossible to relieve the Governor General from the duty of judging, with respect to each particular case, whether the objection to an Act, not of doubtful legality, is sufficiently grave as, under all circumstances, to warrant a refusal to act at once on the advice tendered him.

With regard to your remark, that it is worthy of consideration whether it would not be expedient to establish a tribunal for the decision of all questions of constitutional law and conflict of jurisdiction, I see no reason for the establishment of such a tribunal. Any question of this kind could be entertained and decided by the local courts, subject to any appeal to the Judicial Committee of the Privy Council, and it does not appear in what respect this mode of determination is likely to be inadequate or unsatisfactory.

I have, &c.,

GRANVILLE.



MINISTERIAL RESPONSIBILITY IN CONNECTION WITH DISALLOW-  
ANCE OF PROVINCIAL ACTS.

CORRESPONDENCE, Reports of the Minister of Justice, and Orders in Council,  
upon the general question of Ministerial Responsibility in connection  
with the disallowance of Acts of the Provincial Legislatures.

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*The Governor General to the Earl of Carnarvon.*

OTTAWA, 11th March, 1875.

MY LORD,—I have the honour to inclose for your Lordship's information, an  
extract from the Votes and Proceedings of the House of Commons of  
March, 10, 1875. the Dominion, from which you will see that an address has been  
voted to Her Most Gracious Majesty on the subject of the School Act recently passed  
by the legislature of the province of New Brunswick.

I have, &c.,

DUFFERIN.

*Resolution of New Brunswick Legislature.*

HOUSE OF ASSEMBLY, FREDERICTON, Saturday, 4th March, 1874.

Whereas petitions, numerously signed, have been presented to this House, during  
the last and the present sessions of the legislature, praying that such amendment may  
be made in the Common School Act, 1871, as will secure to Her Majesty's Roman  
Catholic subjects of this province, schools generally known as "separate schools";

And whereas, this House continues to hold the opinion that any system of educa-  
tion, under the control and supervision of the State, should grant to all the people of  
the province, similar and equal rights in respect of education, without distinction of  
class or creed;

And whereas, by the provisions of the British North America Act, 1867, if a  
system of separate schools is established, it shall for ever thereafter be beyond the power  
of the legislature to interfere with or repeal the Acts creating such a system;

And whereas, certain exclusive rights, powers and jurisdictions have been vested  
in the legislature of this province, guaranteed to it by the terms and provisions of the  
"British North America Act, 1867," the enjoyment of which is essential to the welfare  
of this province, and the harmonious working of the constitution:

Resolved, That after careful consideration of the said petitions, and whilst affirm-  
ing that various important changes may advantageously be made, from time to time, in  
the Acts relating to education, whereby the burdens imposed by the said Acts may be

lightened or made to fall more equitably, this House is of opinion that no changes in the said Acts should be made, whereby special rights and privileges in respect of denominational education should be granted to any class of persons in this province ; and, further ;

Resolved, That in the opinion of this House no Acts should be done or passed whereby the jurisdiction and powers of the legislature, established by the British North America Act, 1867, shall be impaired or curtailed, without the sanction of the people of this province, previously expressed at the polls ; and therefore ;

Resolved, That this House regrets it cannot comply with the prayer of the said petitions ; and, further, Resolved, That this House most respectfully, but firmly, maintains and submits that no Acts should be done or passed at any time by the Parliament of the United Kingdom of Great Britain and Ireland, or by the Parliament of the Dominion of Canada, to impair, curtail, alter or withdraw the said rights, powers and jurisdiction or any of them, without the requisition or consent of this legislature for that purpose first made or obtained, and signified by address from the legislature of this province.

GEO. T. BLISS,

*Clerk.*

*The Governor General to the Earl of Carnarvon.*

GOVERNMENT HOUSE, OTTAWA, 13th April, 1875.

MY LORD,—With reference to my despatch, No. 67, dated 11th March, 1875, informing your Lordship that an address to Her Majesty had been voted by the House of Commons, on the subject of the School Act recently passed by the legislature of the province of New Brunswick, I have now the honour to transmit the address to your Lordship, for presentation to Her Most Gracious Majesty.

I have also the honour to inclose a printed copy of the address.

I have, &c.,

DUFFERIN.

*Address of House of Commons to Her Majesty.*

TO THE QUEEN'S MOST EXCELLENT MAJESTY :

MOST GRACIOUS SOVEREIGN :

We, your Majesty's most dutiful and loyal subjects, the Commons of the Dominion of Canada, in Parliament assembled, humbly approach your Majesty for the purpose of representing :

That in the opinion of this House, legislation by the Parliament of the United Kingdom encroaching on any powers reserved to any one of the provinces by "The British North America Act, 1867," would be an infraction of the provincial constitutions ; and that it would be inexpedient and fraught with danger to the autonomy of each of the provinces, for this House to invite such legislation.

That on the 29th day of May, 1872, the House of Commons adopted the following resolution :—

"This House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that province, and hopes that it may be so modified during the next session of the legislature of New Brunswick, as to remove any just ground of discontent that now exists."

That this House regrets that the hope expressed in the said resolution has not been realized.

That we most humbly pray that your Majesty will be graciously pleased to use the influence of your Majesty with the Legislature of New Brunswick to procure such a modification of the said Act as shall remove such grounds of discontent.

*Ordered*, That the said address be engrossed.

On motion of Mr. Cauchon, an Address was voted to His Excellency the Governor General, praying him to transmit the foregoing address of this House to Her Majesty, in such a way as his Excellency may deem fit, in order that the same may be laid at the foot of the Throne.

*Ordered*, That the said Address be engrossed and presented to his Excellency by such members of this House as are of the Honourable the Privy Council.

*The Earl of Carnarvon to the Governor General.*

DOWNING STREET, 18th October, 1875.

MY LORD,—I duly received and considered your Lordship's despatch, No. 96, of the 13th of April, communicating to me an Address voted by the House of Commons of Canada to the Queen, on the subject of the New Brunswick Schools Act of 1871, and I have thought it convenient to defer my reply to it until your return to Canada.

The address was laid at the foot of the Throne, and the Queen was pleased to receive it very graciously, but I was not able to advise Her Majesty to take any action respecting it.

2. I concur with the representation of the address, that legislation by the Imperial Parliament, curtailing the powers vested in a province by the British North America Act, 1867, would be an undue interference with the provincial constitutions, and with the terms on which the provinces consented to become members of the Dominion. And holding, as I do, this opinion, while I cannot but feel that if I were to recommend the Queen to intervene directly in this matter, by advising that legislature to legislate in any particular direction, I might be deemed to counsel an interference with the system of government established by the Act of Union, not greatly differing from that which the address deprecates.

3. For this reason I have not felt myself at liberty to advise Her Majesty to take any action with respect to this address. At the same time, there can be no impropriety in my expressing the strong hope which I entertain, that, as in other British communities, the majority of the population in New Brunswick, which, through its representatives, controls the educational system of the province, may be disposed to adopt such modifications of the existing rules as may render them less unacceptable to those who, from conscientious reasons, have felt themselves obliged to protest against the system now in force.

I cannot, in conclusion, consistently with my duty, refrain from observing that as education is one of the subjects expressly and exclusively reserved to the provincial legislatures by the "British North America Act, 1867," it is for the serious consideration of those in New Brunswick, who take an active part in relation to it, whether there can be any advantage, and whether there must not be serious inconvenience, in bringing under public discussion in the Dominion legislature, a controverted question which may possibly engender much heat and irritation, and over which it has no jurisdiction.

I have, &c.,

CARNARVON.

*The Governor General to the Earl of Carnarvon.*

GOVERNMENT HOUSE, OTTAWA, 7th April, 1875.

MY LORD,—I have the honour to inform your Lordship that the Honourable Mr. Blake, member for South Bruce, on the 22nd February, gave notice that he would move, in the House of Commons, the following resolutions:—

"That by the 56th clause of the British North America Act, 1867, it is in effect enacted, that when the Governor General assents to a bill in the Queen's name, the Queen in Council may, within two years after its receipt, disallow such Act.



"That by the 90th clause of the said statute it is enacted that the above provision shall extend and apply to the legislatures of the several provinces as if re-enacted, with the substitution of the Lieutenant-Governor for the Governor General, of the Governor General for the Queen, of one year for two years, and of the province for Canada.

"That in the opinion of this House the power of disallowance of Acts of a local legislature conferred by the said statute is thereunder vested in the Governor General in Council, and that His Excellency's ministers are responsible to Parliament for the action of the Governor General in exercising or abstaining from the exercise of the said power.

"That by a letter dated 13th December, 1872, the registrar of the Privy Council of the United Kingdom conveyed to the Colonial Office the opinion of the Lord President of the Council, that the power of confirming or disallowing local Acts is, under the said statute, vested in the Governor General, acting under the advice of his constitutional advisers.

"That notwithstanding the premises, by despatch dated 30th June, 1873, the Secretary for the Colonies, in response to an application from the Governor General for instructions on the subject, informed His Excellency that he was advised by the law officers of the Crown that the question of disallowance or allowance of local Acts is a matter in which His Excellency must act on his own individual discretion, and in which he cannot be guided by the advice of his responsible ministers.

"That this House feels bound, in assertion of the constitutional rights of the Canadian people, to record its protest against, and dissent from, the said instruction, and to declare its determination to hold His Excellency's ministers responsible for his action in the exercise of the power so conferred by the said statute."

An opportunity of bringing the subject before the House did not occur until Wednesday, 31st March, when Mr. Blake moved the adoption of the resolution of which he had given notice; but after a debate, in the course of which Mr. Mackenzie and Sir J. A. Macdonald expressed their assent to the constitutional doctrines laid down by Mr. Blake, that gentleman withdrew his motion.

I have the honour to inclose a copy of the parliamentary report of the debate that took place on that occasion.

I have, &c.,

DUFFERIN.

*The Governor General to the Earl of Carnarvon.*

GOVERNMENT HOUSE, OTTAWA, 8th April, 1875.

MY LORD,—I have the honour, at the request of my Privy Council, to transmit to your Lordship a copy of a report made to me by a committee of that body, on the question of ministerial responsibility in connection with the disallowance by the Governor General, of Acts passed by the legislatures of the several provinces of the confederation.

I have, &c.,

DUFFERIN.

*Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 8th March, 1875.*

The Committee of Council have had under consideration the question of ministerial responsibility in connection with the disallowance of Acts passed by the local legislatures of confederated provinces.

Lord Kimberley, late Secretary of State for the Colonies, in despatch dated 30th June, 1873, having reference to the disallowance of certain Acts passed by the New Brunswick Legislature, with regard to the school system in that province, makes the following statements:—

"I am advised—

"1. That these Acts of the New Brunswick legislature are, like the Acts of 1871, within the powers of that legislature.

"2. That the Canadian House of Commons cannot constitutionally interfere with their operation by passing a resolution, such as that of the 14th May last. If such a resolution were allowed to have effect, it would amount to a virtual repeal of the section of the British North America Act, 1867, which gives the exclusive right of legislation in these matters to the provincial legislature.

"3. That this is a matter in which you must act on your own individual discretion, and on which you cannot be guided by the advice of your responsible ministers of the Dominion."

Section 90 of the British North America Act, 1867, reads as follows :—

"The following provisions of this Act respecting the Parliament of Canada, namely: the provisions relating to appropriation and tax bills, the recommendation of money votes, the assent to bills, the disallowance of Acts, and the signification of pleasure on bills reserved,—shall extend and apply to the legislatures of the several provinces as if those provisions were here re-enacted and made applicable in terms to the respective provinces and the legislatures thereof, with the substitution of the Lieutenant-Governor of the province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of one year for two years, and of the province for Canada.

The power of disallowance is here clearly vested in the Governor General, in the same manner as the power of assent or disallowance is vested in Her Majesty by sections 56 and 57, that is, in the Queen in Council.

The committee, therefore, humbly submit that the passage above quoted would, if acted upon, destroy all ministerial responsibility and impose on the Governor General a responsibility not intended by the statute, and at variance with the constitution. It would also be impracticable in operation, as some practical legal authority must examine the statutes passed by the local legislatures, to enable the Governor General to arrive at an intelligent decision. If this could be done by importing the services of any one outside the Privy Council, it would establish a subsidiary body, not contemplated by the constitution. If done by the minister or ministers, then the ministerial responsibility at once attaches.

That this view is taken by Her Majesty's Privy Council, the following letter written by Mr. Reeve, clerk of the Council, and dated 13th December, 1872, clearly shows :—

*"Mr. Reeve to Mr. Holland.*

*"PRIVY COUNCIL OFFICE, 13th December, 1872.*

"SIR,—I have submitted to the Lord President of the Council your letter of the 9th instant, transmitting a copy of a despatch from the Governor General of Canada, with inclosures, respecting an Act passed by the Provincial Legislature of New Brunswick with reference to common schools, and requesting to know whether the opinion of the Lords of the Judicial Committee of the Privy Council on this question can properly be obtained.

"It appears to his Lordship that, as the power of confirming or disallowing provincial Acts is vested by the statute in the Governor General of the Dominion of Canada, acting under the advice of his constitutional advisers, there is nothing in this case which gives to Her Majesty in Council any jurisdiction over this question, though it is conceivable that the effect and validity of this Act may, at some future time, be brought before Her Majesty, on an appeal from the Canadian courts of justice.

"This being the fact, his Lordship is of opinion that Her Majesty cannot with propriety be advised to refer to a committee of the Council in England, a question which Her Majesty in Council has at present no authority to determine, and on which the opinion of the Privy Council would not be binding on the parties in the Dominion of Canada.

*"I have, &c.,*

*"HENRY REEVE,*

*"Registrar Privy Council."*

The committee advise that a copy of this minute be transmitted by your Excellency for the consideration of Her Majesty's Government.

W. A. HIMSWORTH,  
*Clerk Privy Council.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th February, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd December, 1875.

The undersigned, to whom has been referred the despatch of the 5th November, 1875, from the Earl of Carnarvon to his Excellency, upon the Minute of Council of the 8th March, 1875, on the question of ministerial responsibility in connection with the disallowance of provincial Acts, begs to report as follows:—

The minute was evoked by a despatch from Earl Kimberley, dated 30th June, 1873, in which His Lordship, upon the advice of the law officers of the Crown in England, instructed His Excellency that the question whether a provincial Act should be disallowed, was a matter in which His Excellency should act on his own individual discretion, and in which he could not be guided by the advice of his responsible ministers.

In order to have a clear understanding of the question raised, a brief preliminary statement is requisite.

The powers of provincial legislatures are, by their constitution, limited to certain subjects of a domestic character, so that their legislation can affect only provincial, and at most Canadian interests.

Provincial Acts are, to the extent to which they may transcend the competence of the legislature, inoperative *ab initio*. There is no power to "allow" them, nor can any attempted "allowance" give them vitality, so that void Acts left to their operation remain void thereafter.

Provincial Acts are, to the extent to which they may be within the competence of the legislature, operative *ab initio*, and so continue unless and until disallowed.

Lord Carnarvon, in the despatch now under review, states that in his opinion the constitution of Canada does not contemplate any interference with Provincial legislation on a subject within the competence of the local legislatures.

Without attempting to expound the principles on which the power of disallowance should be exercised, the undersigned may be permitted to observe, that the considerations involved are of a more complex and delicate character than might, at first sight, be perceived.

So long ago as 9th June, 1868, an Order in Council was passed on the subject, adopting a memorandum from the Minister of Justice expressing the following views:—

"The same powers of disallowance as have always belonged to the Imperial Government with respect to Acts passed by colonial legislatures have been conferred by the Union Act on the Government of Canada. Of late years Her Majesty's Government has not, as a general rule, interfered with the legislation of colonies having representative institutions and responsible government, except in the cases specially mentioned in the instructions to the governors, or in matters of Imperial, and not merely local interest.

"Under the present constitution of Canada, the general government will be called upon to consider the propriety of allowance or disallowance of provincial Acts, much more frequently than Her Majesty's Government has been, with respect to colonial enactments.

"In deciding whether any Act of a provincial legislature should be disallowed or sanctioned, the Government must not only consider whether it affects the interests of the whole Dominion or not, but also whether it be unconstitutional, whether it exceeds



the jurisdiction conferred on local legislatures, and, in cases where the jurisdiction is concurrent, whether it clashes with the legislation of the general Parliament."

Without discussing how far this memorandum accurately states the circumstances under which the power of disallowance may be exercised, and referring only to the cases to which Lord Carnarvon more especially alludes, it will be found that in their disposition numerous grave and difficult questions may arise. There may be a provincial jurisdiction for a particular purpose, exercised in fact, though not in form, for the accomplishment of another purpose exclusively within Canadian jurisdiction.

It is very often doubtful whether an Act is within or beyond the competence of the local legislature. Frequently, local Acts are mainly valid, but yet contain some provision beyond the competence of the legislature.

In the character of the enactments beyond the competence of the legislature there is a vast difference, since, though all such provisions are alike void, yet some Acts might be left to their operation without inconvenience, while to take the same course as to others might produce serious embarrassment and confusion. It is, in each particular case, a question to be decided whether the Act, through containing some void provisions, should be disallowed or left to its operation, and in practice a considerable number of such Acts are so left.

It thus appears that whatever be the range of the power of disallowance, and the principles on which it should be exercised, it must often be very difficult to decide whether, on the whole, any particular Act should be disallowed or left to its operation.

The question at issue is by whom, and under what responsibilities, the power of disallowance is to be exercised.

The power of disallowance of Canadian statutes is, by sec. 56 of the "British North America Act, 1867," vested in the Queen in Council.

By sec. 90 of the same Act this provision is extended and applied to each province as if it were re-enacted, and is so made applicable in terms thereto, with the substitution, among other things, of the Governor General for the Queen.

The result is, that the express words of the Act, the power of disallowance of provincial statutes is vested in the Governor General in Council—a phrase which, under the 13th section of the Act, means "the Governor General, acting by and with the advice of the Queen's Privy Council for Canada."

If the British North America Act had not contained these express provisions it would seem that, upon the plain principles of the constitution, the result would have been the same.

Supposing that the Act had vested the power of disallowance of Canadian statutes in Her Majesty, not according to words "in Council," it would not be contended that the power so given could be constitutionally exercised otherwise than under the advice of Her Majesty's ministers, who would be responsible for Her Majesty's action, and by parity of reasoning, a power of disallowance of provincial statutes given to the governor could be exercised only under the advice of his ministers, who would be responsible for his action.

It results from preceding observation that the only contingencies which can arise are,—

1. That the governor should propose to disallow a provincial statute without or against the advice of his ministers.
2. That ministers should propose to disallow a provincial statute without the assent of the governor.

The position taken by the Council is, that neither of these things can be done; that the power being vested in the Governor in Council, any action taken must be accomplished by Order in Council, and that a Governor who thinks it necessary that a provincial Act should be disallowed must find ministers who will take the responsibility of advising its disallowance; while ministers who think it necessary that a provincial Act should be disallowed must resign unless they can secure the assent of the Governor to its disallowance—ministers being in every case responsible to Parliament for the course taken.

Lord Carnarvon suggests that the question is one in respect of which it is more in accordance with the spirit of the constitution that a rigid rule of action should not be established.

But the undersigned ventures to submit that the question involves simply the application to a plain statute of the well-settled rules of construction, and the application to a plain case, of the fundamental principle of the constitution.

It is to the spirit as well as to the letter of the constitution that Council have appealed, and grave would be their responsibility were they to agree that either spirit or letter contemplates a rule of action so lax as to justify, or even to render possible, the violation of its fundamental principle.

Lord Carnarvon refers to a correspondence (annexed to his despatch) with an Australian colony upon the subject of the exercise of the prerogative of pardon, and suggests that the rule there propounded is applicable to the present case.

It seems needless to complicate the question in hand by any extended discussion of the views expressed in that correspondence, which will come more fitly under review in connection with another despatch now under the consideration of Council.

Were the undersigned to assume (without admitting) the accuracy, as applied to Canada, of the propositions there advanced, he would yet observe that, whether sound or unsound, they are founded upon one main consideration, which is supposed to involve exceptional treatment of the question, namely, that "the governor to whom personally the Queen delegates a very high prerogative (that of pardon), cannot in any way be relieved from the duty of judging for himself in every case in which that prerogative is proposed to be exercised; and this the more, since it may be invoked in cases "in which matters of imperial interest or policy, or the interest of "other countries, are involved."

It is argued that this consideration authorizes, and indeed requires, the governor to act in the exercise of that particular prerogative in some manner and to some extent differently from the mode in which he is ordinary to act, and investing him with exceptional power, necessarily diminishes *pro tanto* the responsibility of his ministers.

But, however this may be, the consideration referred to does not apply to the case in hand.

There is here no question of a high prerogative of Her Majesty, delegated by her under special commission to her confidential officer, and capable of being used by that delegate in matters which may involve imperial or foreign interests.

The power here is not vested in, and consequently could not be delegated by Her Majesty.

The power here—a power, the exercise of which affects provincial and Canadian interests—is, by an Act of Imperial Parliament, vested in the Governor in Council, and the undersigned maintains with confidence that to the exercise of a power so vested, it is impossible to apply the principle propounded as applicable to the case of the prerogative of pardon. Nor is it possible to deal with this power on principles different from those which apply to the exercise of the other powers of government conferred in like terms by the same statute. Thus in effect the discussion involves the whole question of responsible government, and if the rule proposed by Lord Carnarvon is conceded, it would be impossible to resist its application to our entire system.

That rule is, that "The Governor General, after having had recourse to the advice of his ministers, whom the Parliament holds answerable for advising him as to all public acts (though not in all cases for the acts themselves), may properly be required to give his own individual decision as to allowance or disallowance."

Lord Carnarvon proceeds to say that the constitutional remedy for any prolonged difference of opinion between the Governor General and his advisers would be the same in this as in any other case of a similar nature, and that, holding as he does, the opinion, that the constitution of Canada does not contemplate any interference with provincial legislation on a subject within the competence of the local legislature, by the Dominion Parliament, or as a consequence, by the Dominion ministers, he assumes that those ministers would not feel themselves justified in retiring from the administration of public affairs on account of the course taken by the Governor General on such a



subject—it being one for which the Dominion Parliament cannot hold themselves responsible, though it may demand to know what advice they gave.

The undersigned ventures to submit that the plan proposed by Lord Carnarvon is not in accordance with the constitution; that His Excellency's ministers (whose recommendation is essential to action) are responsible, not merely for the advice given, but also for the action taken; that the Canadian Parliament has the right to call them to account, not merely for what is proposed, but for what is done—in a word, that what is done is practically *their* doing.

The importance to the people of the advice given by ministers is in precise proportion to its effectiveness. So long as the course pursued is dependent on the advice given, responsibility for the advice is responsibility for the action, and is therefore, valuable; but it is the action which is really material; and to concede that there may be action contrary to advice would be to destroy the value of responsibility for the advice—to deprive the people of their constitutional security for the administration, according to their wishes, of their own affairs—to yield up the substance, retaining only the shadow of responsible government.

The undersigned agrees with the view of Lord Carnarvon that, if it be the right and duty of the governor to act in any case contrary to the advice of his ministers, they cannot be held responsible for his action, and should not feel themselves justified, an account of it, in retiring from the administration of public affairs. But these are the results which render it difficult to come to the conclusion that any such right or duty can properly devolve upon the governor; because they show that his action would be an exercise of power for which the free people over whom he rules could find no man whom they could call to account.

The undersigned suggests that Lord Carnarvon should be informed that while Council concur in his view that his Excellency's correct appreciation of public feeling, and the thorough understanding which exists between his Excellency and his advisers are of themselves sufficient to render improbable any serious difference of opinion on the subject of the disallowance of a provincial statute, and while they highly appreciate the great consideration shown by Lord Carnarvon in explaining in so clear a manner his conception of the principle applicable to the question under discussion, it appears to them to be essential to the good administration of affairs, and to the maintenance of the proper relations between the Governor General, the ministers, and the Parliament, that there should be a correct understanding as to their relative rights and duties, and that for the reasons given in this report they remain of the opinion that no action can be taken on the question whether a provincial statute, should be disallowed, save by and with the advice of his Excellency's ministers, who are, and of right ought to be, responsible to Parliament for such action.

EDWARD BLAKE,

*Minister of Justice.*

*The Earl of Carnarvon to the Governor General.*

DOWNING STREET, 1st June, 1876.

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's despatch, No. 96, of the 6th of April, inclosing a report of the Committee of the Privy Council, concerning a report by the Minister of Justice on the question of ministerial responsibility in connection with the disallowance of provincial Acts.

2. This question is, I admit, by no means free from difficulty, and as I observed in my despatch of the 5th of November, 1875, could, if any practical necessity for an authoritative decision of it should arise, I apprehend, only be finally decided by an appeal to the Judicial Committee of the Privy Council, from a colonial judgment on the construction of the British North America Act. As, however, no such necessity exists, or, at all events, is urgent at the present moment, I think there may be advantage in my inviting your ministers to consider a view of the question to which my attention has



been directed—it being understood that I am not now pressing this view in opposition to that of your government.

3. It has been suggested that the language of that Act, which was very carefully chosen, for the purpose of preventing doubts on constitutional points, does not sustain the opinion that the power and responsibility of the Dominion Government are as complete with respect to the specially reserved subjects of provincial legislation, as to other questions.

4. In sections 10 and 13 the distinction between “the Governor General” and “the Governor General in Council” is carefully drawn, and this distinction is closely observed throughout the Act. It may, therefore, be urged, that if “the Governor General in Council” had been intended in section 90, that expression would have been used, especially as the object of the section was to declare in what manner the powers, which, after much negotiation, had been reserved to the provincial legislatures, were to be exercised.

5. It is further suggested that if the Dominion legislature, or those members of it who, for the time being, are selected as the advisers of the Governor General, could be said to have the power of controlling the enactment, or operation, of Provincial Acts, the consequence would be a virtual repeal of the section of the “British North America Act, 1867,” which gives the exclusive right of legislation in certain matters to the provincial legislatures.

6. I regret that the records of this department do not show (and I do not sufficiently trust my own recollection on the subject) what was the precise intention of the provision requiring that the Governor General should assent to or disallow provincial Acts. But it would seem not improbable that the intention may have been to entrust this function to an authority in Canada, not directly representing that majority of the Dominion Parliament from whose jurisdiction these particular questions had been accepted. I should be glad to have the opinion of your ministers on this point.

7. Even, if, however, there were nothing to be said in answer to the general proposition of the able and careful memorandum prepared by your Minister of Justice, I should still be inclined to doubt whether, practically, the logical consequences should or would be so closely adhered to as to involve the resignation of ministers—at all events, in the large class of cases to which he has referred, as not raising serious questions.

I have, &c.,

CARNARVON.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th September, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th September, 1876.

Upon the despatch of the Earl of Carnarvon to his Excellency, of 1st June, 1876, in reply to that of his Excellency, of the 6th April, upon the question of Ministerial responsibility in connection with the disallowance of provincial Acts referred to the undersigned, he begs to report as follows:—

It appears difficult to see how the question could be brought by appeal to the Judicial Committee of the Privy Council from a colonial judgment on the construction of the Act, unless some provincial Act were attempted to be disallowed by the Governor acting independently and not through the agency of ministers, in which case it is possible that the issue might arise between individuals, as to, to whether the Act was in effect disallowed.

This statement of the only process by which a judgment of a colonial court appealable to the Judicial Committee could be obtained, would seem to show that, practically, the question can not be settled in that way.

With reference to the views suggested to his Lordship, and which he invites his Excellency's ministers to consider, the undersigned will not here repeat several of the arguments in his former report, which appear to him to bear upon these suggestions. He refers to that report, to which he would add the following observations :—

Upon the suggestion that if the Governor General in Council had been intended in section 90, that expression would have been used, it is to be observed that the phraseology of that section was apparently adopted for the sake of brevity, with the view of avoiding a repetition, *mutatis mutandis*, of the clauses to which it refers; and there does not appear to the undersigned to be any reason to conclude that the enactment, substituting the words "the Governor General" for the words "the Queen," can be held, in the particular case in which the latter words are followed by the words "in Council," to mean that the words "in Council" are to be eliminated from the clause as applied to the provinces. It may be added that the other, which is the grammatical construction, appears also to accord with the general intention of the clause.

It is suggested that if a Canadian minister had the power of controlling the enactment or operation of provincial Acts, the consequence would be a virtual repeal of the section of the British North America Act giving the exclusive right of legislation in certain matters to provincial legislatures, and it is suggested as not improbable, that the intention may have been not to entrust the functions of disallowance to an authority in Canada not directly representing the majority of the Canadian Parliament, from whose jurisdiction these questions had been excepted. The undersigned may observe that this, through professing to be an argument *ab inconvenienti* against a particular construction, is in strictness rather an argument for a change in the existing law, than for the adoption of the proposed construction of that law. But the undersigned cannot agree to the propositions advanced.

These arguments occur to him : The Parliament of Canada is composed of representatives of the seven provinces, each of which has, in its provincial character, like political rights. Ministers, whose tenure of office depends upon their retaining the confidence of a parliament so composed, are not likely to abuse a power, the exercise of which would obviously be jealously watched by representatives from all the provinces, since each is alike interested in the maintenance of provincial rights, and therefore in the principles upon which the power of disallowance is exercised. For the same reason any abuse, by ministers, of this power would be quickly followed by the application of the constitutional remedy by parliament. The experience of nearly ten years during which this power has been exercised, does not indicate that the apprehended evils will follow. The objection taken would apply to the power given to the Queen in Council to disallow Canadian laws, whereby, to follow the same line of argument, power is given to an authority directly representing the majority of the British Parliament, to control the enactment or operation of Canadian Acts affecting subjects, the rights of legislating on which has been vested in the Canadian Parliament to the practical exclusion of the British Parliament. But there is in the mode for which we contend a much greater check on the exercise by the Governor in Council of the power of disallowing provincial Acts, than exists upon the exercise by the Queen in Council of the like power with reference to Canadian Acts, since the advisers of the Crown are not in the latter, as they are in the former case, responsible to the Canadians.

Without at all times asserting that the system is perfect, and waiving the question whether there should be any power of disallowance of local enactments, it may be observed that the plan contended for by the Canadian Government appears to be, at any rate, better than the proposed alternative. If, under that alternative, the governor should act against the advice of ministers, he must act either on his own unaided judgment, or upon the counsel of others, not his constitutional advisers, or upon instructions from the Colonial Office.

Which of these plans should be adopted? The first may be said to be impossible. The governor must have some assistance in such matters. The second supposes an unconstitutional plan of secret counsellors, which cannot be sustained. The third would



place the disallowance of provincial Acts in the hands of the Secretary of State for the Colonies, or the law advisers of the Crown in England, which cannot possibly have been intended by the framers of the clause.

In none of these plans is there any responsibility to the Canadian people for the governor's action, nor, as the undersigned ventures to affirm, any likelihood that he will dispose of the important and difficult questions to be solved, as prudently and correctly as under the advice of his responsible ministers, while the existence of the suggested power would be calculated to do mischief, as weakening the great principle of responsible government in the general, and in the particular, as lessening the responsibility of the ministers for action which, notwithstanding their diminished accountability, they would be likely still largely to determine.

EDWARD BLAKE,

*Minister of Justice.*

*The Earl of Carnarvon to the Governor General.*

DOWNING STREET, 31st October, 1876.

MY LORD,—I have the honour to acknowledge the receipt of the Deputy Governor's despatch, No. 49, of the 20th September, inclosing a report of the Privy Council, with a memorandum by the Minister of Justice, in answer to certain points which were discussed in my despatch, No. 145, of the 1st June, relating to the question of Ministerial responsibility in connection with the disallowance of provincial Acts.

2. I do full justice to the force of Mr. Blake's argument, that, as the Canadian Parliament is composed of representatives from the several provinces of the Dominion, any undue interference by ministers with the power of provincial legislation would be jealously watched; and it is also true that, through the ministers being responsible to the Canadian people, a very important check is imposed on the exercise of the power of disallowing provincial Acts. On the other hand, I should feel much difficulty in modifying the opinion which I expressed in my despatch of the 1st June, respecting the interpretation to be attached to the words "Governor General," in section 90 of the "British North America Act, 1867," as it still appears to me that the term "Governor General" and "Governor General in Council" are, throughout that Act, as distinct from one another as "the Queen" and "the Queen in Council" are. I am bound, however, to state that such construction of the Act has had the support of high authorities in this country, and whilst, therefore, I feel justified in inclining to the view which I have expressed, it is one upon which, for the same reason, I could not be prepared to insist strongly. I am, moreover, fully satisfied that Mr. Blake has fully established his argument in regard to the courses which are open to the Governor in case he acts contrary to the advice of his ministers.

3. Mr. Blake contends, with much force, that after having received much advice, it is impossible for him to act on his own unaided judgment; but as to this, I would observe that in the case suggested, his judgment would not, in fact, have been unaided. Having had recourse to the advice of his ministers, and having fully heard them, the Governor General would be thoroughly instructed as to the merits of the case, and would then be competent to judge of the course which it would be advisable for him to take; he would be acting under the advice of his ministers, notwithstanding that he might not feel himself able to act according to that advice. I think this view of the position deserves consideration, though I should not wish to be understood as now laying down any definite rule on a subject, with respect to which you are aware that I incline to think it more in accordance with the true spirit of the constitution, that no unyielding rule should be maintained.

4. But although I may be unable to agree entirely in Mr. Blake's conclusion (and I need hardly say that my sense of his great ability and experience causes me to differ



from him, even in a limited degree, with much reluctance), there can be no doubt that the attention which the whole question has received, has been of much value, and I am glad to be able to agree with Mr. Blake that the experience of the last ten years does not indicate the probability of any grave difficulty occurring.

I have, &c.,

CARNARVON.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 21st November, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th November, 1876.

Upon the despatch of the Earl of Carnarvon of 31st October, 1876, referring to the memorandum of the undersigned, of 6th September, upon the subject of the disallowance of provincial Acts, the undersigned begs to report as follows:—

Lord Carnarvon, referring to the argument that it is impossible for the governor to act against the advice of his ministers on his own unaided judgment, observes that in the case suggested, the governor's judgment would not, in fact, have been unaided; that having recourse to the advice of his ministers, and having fully heard them, he would be thoroughly instructed as to the merits of the case, and would then be competent to judge of the course which it would be advisable for him to take, and that he would be acting under the advice of his ministers, notwithstanding that he might not feel himself able to act according to that advice.

The undersigned ventures to suggest that it can hardly be assumed that the governor is aided by his ministers' advice in coming to a conclusion adverse to that advice; it seems to him that in the case put the governor is acting rather against than under the advice of his ministers, and that his judgment may, without impropriety be called unaided, since his conclusion is based, not on his ministers' views, which he overrules, but on opposite views evolved by himself alone.

The undersigned, who is very sensible of the kindness of Lord Carnarvon's language, has thought it due to his Lordship to make this statement of the sense in which the phrase was used.

It still appears to him that, even apart from the constitutional question, the practical difficulty is insuperable; but his main position throughout has been that under the letter and spirit of the constitution, ministers must be responsible for the governor's action—a position obviously untouched by the criticism to which he has referred.

While the undersigned is unable to alter his conclusions, he does not think he can usefully add to, or reiterate, his arguments; nor, indeed, does he understand Lord Carnarvon to intend a prolongation of the correspondence.

He regrets that the discussion has not resulted in an agreement, but he ventures to hope that it has, at any rate, decreased the probability of future difficulty on a question of very grave importance.

EDWARD BLAKE,  
*Minister of Justice.*

*COPY of a Report of the Committee of the Honourable the Privy Council, approved by His Excellency the Governor in Council on the 29th November, 1882.*

The Committee in Council deem it their duty to call the attention of Your Excellency to the fact that in several provinces, bills passed by the legislature have been reserved for the Governor General's assent by their Lieutenant Governors on the advice of their ministers.

This practice is at variance with those principles of constitutional government which obtain in England, and should be carried out in Canada and its provinces.

As the relations between the Governor General and his responsible advisers, as well as his position as an imperial officer, are similar to the relations of a Lieutenant Governor with his ministers and his position as a Dominion officer, it is only necessary to define the duties and responsibilities of the former in order to ascertain those of a Lieutenant Governor. Now it is clear that since the concession of responsible government to the colonies, the advisers of the Governor General hold the same position with regard to him, as the imperial ministry does with respect to Her Majesty. They have the same powers and duties and responsibilities. They ought not to have, and of right have not, any greater authority with respect to the legislation of the Canadian Parliament, than the Queen's ministers have over the legislative action of the Imperial Legislature.

Now in England the ministry of the day must of necessity have the confidence of the majority in the popular branch of the legislature, and therefore they generally control, or rather direct, current legislation.

Should however any bill be passed notwithstanding their opposition or adverse opinion, they cannot advise its rejection by the sovereign.

The power of veto by the Crown is now admitted to be obsolete and practically non-existent. The expression *Le Roi ou la Reine s'avisera*, has not being heard in the British Parliament since 1707, in the reign of the Queen Anne, and will in all probability never be heard again. The ministers in such a case, if they decline to accept the responsibility of submitting the bill for the royal assent, must resign and leave to others the duty of doing so.

If, notwithstanding their adverse opinion they do not think the measure such as to call for their resignation, they must submit to the will of Parliament and advise the sovereign to give the royal assent to it.

Under the same circumstances your Excellency's advisers must pursue the same course.

The right of reserving bills for the royal assent, conferred by the British North America Act was not given for the purpose of increasing the power of the Canadian ministers, or enabling them to evade the constitutional duty above referred to.

This power was given to the Governor General as an imperial officer and for the protection of imperial interests. It arises from our position as a dependency of the empire, and to prevent legislation which in the opinion of the Imperial Government is opposed to the welfare of the empire or its policy.

For the exercise of this power the Governor General, with or without instructions from Her Majesty's Government, is responsible only to the British Government and Parliament, and should the Canadian Government or Parliament deem at any time that the power has been exercised oppressively, improperly, or without due regard to the interests of the Dominion, their only course is to appeal to the Crown and eventually to the British Parliament for redress.

As has already been stated, the same principles and reasons apply, *mutatis mutandis*, to provincial governments and legislatures.

The Lieutenant Governor is not warranted in reserving any measure for the assent of the Governor General on the advice of his ministers. He should do so in his capacity of a Dominion officer only, and on instructions from the Governor General. It is only in a case of extreme necessity that a Lieutenant Governor should without such instructions exercise his discretion as a Dominion officer in reserving a bill. In fact, with facility of communication between the Dominion and provincial governments such a necessity can seldom if ever arise.

If this minute be concurred in by your Excellency, the committee recommend that it be transmitted to the Lieutenant Governors of the several provinces of the Dominion for their instruction and guidance.

JOHN J. MCGEE,  
Clerk of the Privy Council.

## ONTARIO, 31ST VICTORIA, 1867-68.

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1ST SESSION—1ST PARLIAMENT.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th July, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th June, 1868.

With reference to the Imperial "British North America Act, 1867," and also to the Order in Council of the 9th instant, on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report;

That he considers the Acts (chapters 1 to 4, 7 to 13, 15, 16, 18, 21 to 28, 31, 33 to 37, 39, 43, 46 to 51, 57 to 63, 68 to 72, 74 to 79), passed by the Legislature of the province of Ontario, in the first session thereof, to be free from objection of any kind. He therefore recommends that the same be respectively left to their operation.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th July, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st July, 1868.

In reference to the following Acts passed by the Legislature of the province of Ontario, at its late session, the undersigned has the honour to report as follows:—

31 Vic., cap. 6.—The second section of chapter 6 is objectionable, inasmuch as it declares that a wilfully false statement made before the commissioners authorized to be appointed under the Act, is a misdemeanour, punishable in the same manner as wilful and corrupt perjury.

This is legislation respecting the Criminal Law, which appertains solely to the Parliament of the Dominion, and the undersigned recommends that the attention of the Government of Ontario be called to this clause, suggesting that it should be repealed next session, and no action taken upon it meanwhile. (*Repealed by Stat. of Ont., 32nd Vic., cap. 27, 1869.*)

31 Vic., cap. 19.—The 40th section of this Act is, in the opinion of the undersigned, liable to the same objection, and the same course is recommended. (*Repealed by Stat. of Ont., 32nd Vic., cap. 27, 1869.*)

31 Vic., cap. 20.—The 82nd and 83rd sections of this Act are objectionable for the same reason. (*Repealed by Stat. of Ont., 32nd Vic., cap. 27, 1869.*)

31 Vic., cap. 29.—The 50th section of this Act is objectionable for the same reason. (*Repealed by Stat. of Ont., 32nd Vic., cap. 27, 1869.*)



31 Vic., cap. 30.—The 12th section of this Act provides a qualification: “At the parliamentary elections.” This clause, if it is meant to include the elections to the Parliament of Canada, is beyond the power of the local legislature. (*Repealed by Stat. of Ont., 32nd Vic., cap. 27, 1869.*)

The 41st section of the Union Act provides, that all the laws of the several provinces relating to the parliamentary elections in force at the time of the union, shall remain in force until the Parliament of Canada otherwise provides.

If the clause in question is intended merely to apply to Elections for the Legislative Assembly of Ontario, it is inaccurate in expression.

To avoid confusion, the Union Act confines the name of Parliament to the general legislature—the provincial legislative bodies are styled uniformly as legislatures.

The undersigned recommends that the attention of the Government of Ontario be called to this section, and suggests that the same should be amended, so as to limit it expressly to elections for the legislature of Ontario.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 5th November, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1868.

The undersigned has the honour to report that after full consideration he is of opinion that the following Acts passed by the legislature of the province of Ontario at its last session, 31st Victoria, should, in addition to those mentioned in his report of 16th June last, be left to their operation, viz. :—

(Chapters 14, 32, 40, 41, 42, 44, 45, 52 to 56, 65 to 67, and 73.)

All of which is respectfully submitted.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th November, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1868.

With reference to his report of the 1st July last, the undersigned has the honour further to report as to the following Acts passed by the legislature of the province of Ontario, at its last session, viz. :—

31 Vic., cap. 17.—That the first section of cap. 17, which continues the Bankruptcy Act passed by the late province of Canada, being 7th Vic., cap. 10; and the 3rd section, which extends the period limited by the 4th clause of the 29th and 30th Vic., cap. 14, for the continuation of the operation of certain savings banks, are objectionable, as they profess to deal with the subject of bankruptcy and savings banks, which, by the British North America Act, are within the exclusive jurisdiction of the Parliament of Canada.

31 Vic., cap. 38, intituled, “An Act to incorporate the Clifton Suspension Bridge Company.”

That this Act is objectionable, inasmuch as it incorporates a company for the purpose of the construction of a bridge beyond the limits of the province of Ontario. It is especially desirable that this Act should be repealed, inasmuch as its promoters, having ascertained the invalidity of the Act in question, procured another Act of incorporation from the Parliament of Canada at its last session, being 31st Vic., cap. 37. The same parties have, therefore, two Acts of incorporation, and might set up pretensions to build two bridges under them.

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31 Vic., cap. 64, intituled, "An Act to incorporate the Board of Trade of the town of Guelph."

That it may be doubted whether this Act is not altogether *ultra vires*, as it incorporates a company for the purpose of promoting and extending the trade and commerce of the province, and as legislation relating to the regulation of trade and commerce is expressly committed to the Parliament of the Dominion by the Union Act.

The undersigned, however, would have recommended that the Act should be left to its operation, were it not for the 22nd and 23rd clauses, the first of which is an express provision affecting the regulations of trade and commerce; and the second concerns the criminal law, both of which subjects are evidently beyond the powers of the local legislature.

31 Vic., cap. 5.—That the 6th clause of cap. 5 is objectionable, inasmuch as it declares certain counterfeiting or imitation of stamps or stamped paper for the purposes of that Act to be perjury, which is legislation respecting the Criminal Law.

The undersigned recommends that the attention of the local government be called to the above, in order that the several clauses may be repealed during the coming meeting of the legislature of Ontario.

All which is respectfully submitted.

JOHN A. MACDONALD.

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## ONTARIO, 32-33 VICTORIA, 1868-69.

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### 2ND SESSION—1ST PARLIAMENT.

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On a report from the Honourable the Minister of Justice, dated 19th February, 1869, approved by his Excellency the Governor General in Council on the 22nd February, 1869, the following Acts passed in the session above mentioned, being considered as free from objection, were allowed to go into operation, viz. :—

Chapters 2, 4, 5, 7 to 20, 24, 25, 27 to 29, 31, 35, 37, 38, 40, 41, 43, 44, 46, 47, 49 to 55, 57, 59, 60, 63 to 65, 67 to 69, 71 to 74, 76 to 79, 81 to 85.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 17th July, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 12th July, 1869.

The undersigned has the honour to report, that after full consideration he is of opinion that the following Acts, passed by the legislature of the province of Ontario, at its second session (32nd Vic.) should, in addition to those mentioned in his report of the 19th February last, be left to their operation, viz. :—

Chapters 23, 32, 33, 39, 42, 45, 48, 58, 61, 62, 66, 70, 76 and 80.

Cap. 30.—The undersigned also recommends that cap. 30, entitled: “An Act to provide for Registration of Births, Marriages, and Deaths,” be left to its operation. At the same time he feels it incumbent upon him to express his doubt whether the subject of legislation in this Act comes within the provision of the 92nd clause of “The British North America Act, 1867”; and as to the 16th clause, whether the expression that the party on conviction shall forfeit the sum of fifty dollars to Her Majesty, may not be held to vest in the Crown, for the purposes of the Dominion the amount of the penalty. These doubts can only be solved by judicial decision.

Cap. 34.—He also recommends that cap. 34, entitled “An Act relating to Mining,” be left to its operation. He would venture, however, to express a doubt whether sections 34 and 35 would not be held to be a portion of the Criminal Law.

Cap. 36.—He also recommends that cap. 36, entitled, “An Act to amend and consolidate the law respecting the Assessment of Property in the province of Ontario,” be left to its operation.

He is inclined to believe, however, that section 177 is *ultra vires*, inasmuch as it in effect declares, that any unjust or fraudulent insertion in the name of any person on any assessor or collector's roll shall be a criminal fraud, (as contra-distinguished from a civil fraud), liable to be tried before a court of competent jurisdiction. This must mean a court of criminal jurisdiction. And it further declares that on conviction the party shall be liable to fine and imprisonment.

It is difficult to avoid the conclusion that this clause makes the act of the fraudulent person a misdemeanour, and if so, it is a portion of the Criminal Law. It is a provision, however, so just in itself, that the undersigned is unwilling to object to it, and leaves the objection to be taken before the courts.

All of which is respectfully submitted.

JOHN A. MACDONALD.



*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 17th July, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th July, 1869.

With reference to the following Acts passed by the legislature of the province of Ontario, at its second session (32 Victoria), the undersigned has the honour to report, as follows:—

That chapter 3, intituled: "An Act to define the privileges, immunities and powers of the Legislative Assembly, and to give summary protection to persons employed in the publication of Sessional Papers," is objectionable.

By the 18th clause of "The British North America Act, 1867," it is enacted, that the privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Commons of the Dominion of Canada, shall be such as shall be from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those held, enjoyed and exercised at the passing of such Act by the House of Commons of the United Kingdom.

It is to be assumed that the power to pass an Act defining those privileges was conferred upon the Parliament of Canada on the ground that, without such a provision, the Parliament of Canada could not have passed any such Act.

It is clear from the current of judicial decision in England that neither of the branches of a colonial legislature have any inherent right to the privileges of the Imperial Parliament.

Perhaps, however, under the legislative powers given to the Parliament of the Dominion by the 91st section of the Union Act, to make laws "for the peace, order and good government of Canada," it might have passed an Act without any enabling power from the paramount authority establishing and defining the privileges of its two chambers.

However this may be with respect to the general Parliament, it is to be observed that there is no clause in the Union Act similar to the 18th, giving to the provincial legislatures power to define or establish their privileges and that no *general* powers of legislation for the good government of the provinces, are given to their legislatures. Their powers are strictly limited to those conferred by the 92nd, 93rd, 94th and 95th clauses of the Union Act.

By the Act in question it will be seen that the legislature of Ontario has declared that the Legislative Assembly and its members shall enjoy the same privileges as those exercised by the House of Commons of Canada.

It would seem, therefore, that this Act is in excess of the power of the provincial legislature.

If it has any power to legislate on the matter at all, it seems to follow that while the general Parliament can under the 18th clause, confer no greater privileges than those enjoyed by the Imperial House of Commons, the provincial legislature being bound by no such limitation, might, if it were so disposed, confer upon itself and its members privileges in excess of those belonging to the House of Commons of England.

That the second section of Chapter 22, intituled: "An Act to amend chapter 15 of the Consolidated Statutes of Upper Canada, intituled: 'An Act respecting County Courts,'" is also objectionable.

That section provides that the judges of those courts are to hold office during pleasure, and shall be subject to removal by the Lieutenant-Governor for inability, incapacity, or misbehaviour, established to the satisfaction of the Lieutenant-Governor in council.

By the 96th clause of the Union Act the Governor General is to appoint County Court judges; and by the 100th clause, the salaries, allowances and pensions of those judges are to be fixed and provided for by the Parliament of Canada.

The inconveniences that may arise from the appointing power being in the Governor General, and the power of removal also in him, at his pleasure, while there at the

same time exists an independent power of removal in the Lieutenant-Governor, are obvious.

The provincial legislature evidently considered itself empowered to pass such an Act by the 14th subsection of the 92nd clause of the Union Act, by which the provincial legislatures have power to make laws in relation to the administration of justice in the province, including the constitution, maintenance and organization of provincial courts.

That the 6th section of chapter 1, being the Supply Bill for 1869, is also objectionable, as by the 96th and 100th clauses of the Union Act it is provided that the Governor General shall appoint the judges of the superior courts, and the Parliament of Canada shall fix and provide their salaries, allowances and pensions; it would seem that the judges of those courts cannot properly, and without a breach of its provisions, receive emolument of any kind from any but the power which appoints and pays them the legal salaries attached to their judicial positions. On these three Acts, the undersigned, on the 20th February last, made a report to your Excellency, which you were pleased to transmit to the Secretary of State for the Colonies, for the purpose of being referred to the law officers of the Crown in England; and the Attorney and Solicitor General have given their opinion, that it was not competent for the legislature of Ontario to pass those Acts, or either of them.

The undersigned recommends that the attention of the Government of Ontario be called to the two first mentioned Acts, and the 6th clause of the last Act, suggesting that they should be repealed next Session, and no action taken upon them meanwhile.

He recommends also that a copy of Lord Granville's despatch on the subject, and of the opinion of the law officers of the Crown, be transmitted, with any Order in Council, that may be adopted on this report, to the Government of Ontario

JOHN A. MACDONALD.

*The Under Secretary of State, Colonial Office, to the Law Officers of the Crown.*

DOWNING STREET, 27th April, 1869.

SIR,—I am directed by Earl Granville to transmit to you copies of a despatch from the Governor General of the Dominion of Canada, No. 22, of the 11th March, 1869, and of a report from the Minister of Justice, inclosed therein, upon certain Acts passed by the legislature of the province of Ontario, and to the request that you will, jointly with the Solicitor General and Attorney General, favour his Lordship with your opinion, whether it was competent for that legislature to pass these Acts, or any of them.

Copies of the commission and instructions to Sir J. Young are annexed.

I am, &c.,

FREDERICK ROGERS.

*The Law Officers of the Crown to the Secretary of State, Colonial Office.*

TEMPLE, 4th May, 1869.

MY LORD,—We are honoured with your Lordship's commands, signified in Sir Frederick Rogers's letter of the 27th April, 1869, stating that he was directed by your Lordships to transmit to us copies of a despatch from the Governor General of the Dominion of Canada, No. 22, of the 11th March, 1869, and of a report from the Minister of Justice, inclosed therein, upon certain Acts passed by the legislature of the province of Ontario, and to request that we would favour your Lordship with our opinion, whether it was competent for that legislature to pass the Acts, or any of them.

Sir Frederick Rogers was pleased to add, that copies of the commission, with instructions to Sir John Young, were annexed.



In obedience to your Lordship's commands, we have the honour to report—

That we have considered the three several Acts to which your Lordship has been pleased to direct our attention, and we are of opinion that it was not competent for the legislature of the province of Ontario to pass such Acts, or either of them. We consider them inconsistent with the provisions of sections 92 and 96 of "The British North America Act."

We have, &c.,

R. P. COLLIER.  
J. D. COLERIDGE.

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 8th May, 1869.

SIR,—In compliance with the request contained in your despatch, No. 22, of the 11th March last, I caused a reference to be made to the law officers of the Crown, respecting the validity of certain Acts mentioned in the margin, lately passed by the legislature of Ontario, and of a clause contained in the Supply Bill for 1869, passed by the same legislature, relating to the increase of the salaries of the judges of the Supreme Courts of the province.

CHAP. 3.—"An Act to define the privileges, immunities and powers of the Legislative Assembly and to give summary protection to persons employed in the publication of Sessional Papers."  
CHAP. 22.—"An Act to amend Chapter 15 of the Con. Statutes of Upper Canada, intituled: 'An Act respecting County Courts.'"

I transmit to you, for your information, and for that of your Privy Council, the inclosed copies of the reply which has been received from the law officers, and of the letter from this office, in which their opinion was requested.

I have, &c.,

GRANVILLE.

*Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 17th July, 1869.*

On the recommendation, dated 12th July, 1869, from the Honourable the Minister of Justice, the committee advise that so much of the despatch from the Secretary of State for the Colonies to your Excellency, dated the 8th May last, as refers to Acts of the provincial legislatures, which might relate to any of the classes of subjects mentioned in the 7th paragraph of the royal instructions, or which might, in your Excellency's opinion, be unconstitutional or in excess of the powers of the local body, be transmitted to the Lieutenant-Governors of the several provinces, for their information and guidance; and also, that a copy of the said 7th paragraph be forwarded therewith.

WM. H. LEE,

*Clerk Privy Council.*

*Extract from the Despatch of the Secretary of State for the Colonies, dated Downing Street, 8th May, 1869, and No. 85.*

I have the honour to acknowledge the receipt of your despatch, No. 23, of the 11th March, asking for instructions as to the course which you should pursue with regard to any Act of the provincial legislatures which might relate to any of the classes of subjects mentioned in the 7th paragraph of the royal instructions, or which might, in your opinion, be unconstitutional, or in excess of the power of the local body.

The prohibitions in the 7th paragraph of the royal instructions, with one qualification, rest on grounds of imperial policy, and therefore the Governor General of the Dominion is not at liberty, even on the advice of his ministers, to sanction or assent to any provincial law in violation of them. He would, indeed, be bound to instruct the Lieutenant-Governor of the province not to give such assent.



The qualification to which I have above referred is this, that while the Governor General is not at liberty to sanction the passing of a law making any donation or gratuity to himself, it would be for his ministers to consider whether they should advise him to consent to a donation by the province to the Lieutenant-Governor, and he would be at liberty to follow that advice with regard to the second point. If the Governor General were advised by his ministry to disallow any provincial Act as illegal or unconstitutional, it would, in general, be his duty to follow that advice, whether or not he concurred in that opinion. If he were advised by his ministry to sanction any Act which appeared to him illegal, it would be his duty to withhold his sanction, and refer the question to the Secretary of State for instructions.

The same course might be taken if the Act recommended for his sanction by his ministers appeared gravely unconstitutional; but it is impossible to relieve the Governor General from the duty of judging, with respect to each particular case, whether the objection to an Act, not of doubtful legality, is sufficiently grave as under all circumstances to warrant a refusal to act at once on the advice tendered to him.

*Copy of the 7th Section of Royal Instructions referred to.*

VII. And for the execution of so much of the powers vested in you by virtue of Assent to Bills. "The British North America Act, 1867," as relates to the declaring either that you assent in Our name to Bills passed by the Houses of Parliament, or that you withhold Our assent therefrom, or that you reserve such Bills for the signification of Our pleasure thereon, it is Our will and pleasure that when any Bill is presented to you for Our assent, of either of the classes hereinafter specified, you shall (unless you think proper to withhold Our assent from the same) reserve the same for the signification of Our pleasure thereon; subject, nevertheless, to your discretion, in case you should be Bills to be of opinion that an urgent necessity exists, requiring that such Bill be brought reserved. into immediate operation, in which case you are authorized to assent to such Bill in Our name, transmitting to us by the earliest opportunity the Bill so assented, with your reasons for assenting thereto, that is to say:—

1. Any Bill for the divorce of persons joined together in Holy Matrimony.
2. Any Bill whereby any grant of land or money, or other donation or gratuity, may be made to yourself.
3. Any Bill whereby any paper or other currency may be made a legal tender, except the coin of the realm, or other gold or silver coin.
4. Any Bill imposing differential duties.
5. Any Bill, the provisions of which shall appear inconsistent with obligations imposed upon Us by treaty.
6. Any Bill interfering with the discipline or control of Our forces in Our said Dominion.
7. Any Bill of an extraordinary nature and importance, whereby Our prerogative, or the rights and property of Our subjects not residing in Our said Dominion, or the Trade and Shipping of the United Kingdom and its dependencies, may be prejudiced.
8. Any Bill containing provisions to which Our assent has been refused, or which has been disallowed by Us.

*Mr. Assistant Secretary Patteson to Under Secretary of State.*

PROVINCIAL SECRETARY'S OFFICE, TORONTO, 27th September, 1869.

SIR,—I am commanded by the Lieutenant-Governor to transmit to you, for the information of his Excellency the Governor General, a copy of a minute passed by the Executive Council of Ontario, having reference to three Acts of the Ontario legislature passed at its last session, and pronounced objectionable in a report of a committee of the Privy Council, made on the 17th July last, founded upon a report of the Minister of Justice, bearing date the 14th of the same month, copies of which documents, as also

of a despatch and enclosures from the Colonial Office, were communicated to the Lieutenant-Governor by letter from the Under Secretary of State for the Provinces.

A copy of the report of the Attorney General of Ontario, upon which action has been taken by the Executive Council, is also transmitted herewith.

I have, &c.,

THOS. C. PATTESON,

*Assistant Secretary.*

*Report of Honourable Attorney General Macdonald, approved by His Honour the Lieutenant-Governor of Ontario in Council, on the 21st September, 1869.*

The undersigned, to whom his Excellency the Lieutenant-Governor referred the letter of the Under Secretary of State, at Ottawa, dated the 24th day of July last, transmitting therewith certain reports and communications as per margin, and all

1. Report of the Honourable the Minister of Justice, dated 14th July, 1869, with copy of Minute of Privy Council approving thereof, and dated 17th July, 1869.

2. A copy of Despatch of 8th May, 1869, from the Col. Minister to His Excellency the Governor General.

3. Copy of letter from Under Secretary of State to Law Officers of the Crown, dated 27th April, 1869, and letter from Law Officers of the Crown, dated 4th May, 1869, with their opinion, addressed to the Right Honourable the Earl of Granville, Colonial Minister.

bearing on specific objections to three several Acts passed during the last session of the Ontario legislature, has the honour to submit the following observations for his Excellency's consideration :—

With respect to chapter 3, intituled : “ An Act to define the privileges, immunities and powers of the Legislative Assembly, and to give summary protection to persons employed in publication of Sessional Papers,” it is said the powers of the legislature of Ontario are strictly limited to those conferred by the 92nd, 93rd, 94th and 95th clauses of the Union Act, that there is no general power conferred on the respective local legislatures to enact laws for the good government of the provinces, as there has been to the general or Dominion legislature ; and that the expressed provision contained in the 18th section of the Union Act, granting to the Senate and House of Commons of Canada, and to the members thereof respectively, “ shall be such as are from time to time defined by the Act of the Parliament of Canada, but so that the same shall never exceed those, at the passing of this Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof,” shows that without such a provision the Parliament of Canada could not have passed such an Act. On these grounds it has been concluded that the Ontario Statute under consideration, is in excess of the powers of the Ontario legislation.

To justify this conclusion, it is said that if the local legislature can pass such a law, because it is not transmitted, it may pass a law exceeding the limitation which has been placed on the Dominion Parliament by the 18th section of the Union Act.

It may not be quite easy to define precisely what power the local legislature may or may not lawfully exercise on the very numerous subjects which are within its jurisdiction.

It cannot be denied that the legislature must possess the power, if not by mere regulation, by statute, at any rate, to provide for the orderly course of its proceedings ; for freedom from arrest of its members whilst attending their duties, and for a reasonable time before and after each session ; for freedom of speech, not only against the Crown, but against private persons ; for the right to publish and distribute generally such matters as may be deemed conducive to the public interest, without the risk of suit for publishing what might be otherwise deemed to be defamatory ; and for the punishment of all persons guilty of contempt in the face of the House, or before its committees.

For without such protection the legislature would be unable to maintain its dignity, and would be more feeble than a justice of the peace, who has a right to punish for contempt committed at his petty sessions.



The qualification to which I have above referred is this, that while the Governor General is not at liberty to sanction the passing of a law making any donation or gratuity to himself, it would be for his ministers to consider whether they should advise him to consent to a donation by the province to the Lieutenant-Governor, and he would be at liberty to follow that advice with regard to the second point. If the Governor General were advised by his ministry to disallow any provincial Act as illegal or unconstitutional, it would, in general, be his duty to follow that advice, whether or not he concurred in that opinion. If he were advised by his ministry to sanction any Act which appeared to him illegal, it would be his duty to withhold his sanction, and refer the question to the Secretary of State for instructions.

The same course might be taken if the Act recommended for his sanction by his ministers appeared gravely unconstitutional; but it is impossible to relieve the Governor General from the duty of judging, with respect to each particular case, whether the objection to an Act, not of doubtful legality, is sufficiently grave as under all circumstances to warrant a refusal to act at once on the advice tendered to him.

*Copy of the 7th Section of Royal Instructions referred to.*

VII. And for the execution of so much of the powers vested in you by virtue of Assent to Bills. "The British North America Act, 1867," as relates to the declaring either that you assent in Our name to Bills passed by the Houses of Parliament, or that you withhold Our assent therefrom, or that you reserve such Bills for the signification of Our pleasure thereon, it is Our will and pleasure that when any Bill is presented to you for Our assent, of either of the classes hereinafter specified, you shall (unless you think proper to withhold Our assent from the same) reserve the same for the signification of Our pleasure thereon; subject, nevertheless, to your discretion, in case you should be Bills to be of opinion that an urgent necessity exists, requiring that such Bill be brought reserved. into immediate operation, in which case you are authorized to assent to such Bill in Our name, transmitting to us by the earliest opportunity the Bill so assented, with your reasons for assenting thereto, that is to say:—

1. Any Bill for the divorce of persons joined together in Holy Matrimony.
2. Any Bill whereby any grant of land or money, or other donation or gratuity, may be made to yourself.
3. Any Bill whereby any paper or other currency may be made a legal tender, except the coin of the realm, or other gold or silver coin.
4. Any Bill imposing differential duties.
5. Any Bill, the provisions of which shall appear inconsistent with obligations imposed upon Us by treaty.
6. Any Bill interfering with the discipline or control of Our forces in Our said Dominion.
7. Any Bill of an extraordinary nature and importance, whereby Our prerogative, or the rights and property of Our subjects not residing in Our said Dominion, or the Trade and Shipping of the United Kingdom and its dependencies, may be prejudiced.
8. Any Bill containing provisions to which Our assent has been refused, or which has been disallowed by Us.

*Mr. Assistant Secretary Patteson to Under Secretary of State.*

PROVINCIAL SECRETARY'S OFFICE, TORONTO, 27th September, 1869.

SIR,—I am commanded by the Lieutenant-Governor to transmit to you, for the information of his Excellency the Governor General, a copy of a minute passed by the Executive Council of Ontario, having reference to three Acts of the Ontario legislature passed at its last session, and pronounced objectionable in a report of a committee of the Privy Council, made on the 17th July last, founded upon a report of the Minister of Justice, bearing date the 14th of the same month, copies of which documents, as also



of a despatch and enclosures from the Colonial Office, were communicated to the Lieutenant-Governor by letter from the Under Secretary of State for the Provinces.

A copy of the report of the Attorney General of Ontario, upon which action has been taken by the Executive Council, is also transmitted herewith.

I have, &c.,

THOS. C. PATTESON,

*Assistant Secretary.*

*Report of Honourable Attorney General Macdonald, approved by His Honour the Lieutenant-Governor of Ontario in Council, on the 21st September, 1869.*

The undersigned, to whom his Excellency the Lieutenant-Governor referred the letter of the Under Secretary of State, at Ottawa, dated the 24th day of July last, transmitting therewith certain reports and communications as per margin, and all bearing on specific objections to three several Acts passed during the last session of the Ontario legislature, has the honour to submit the following observations for his Excellency's consideration:—

1. Report of the Honourable the Minister of Justice, dated 14th July, 1869, with copy of Minute of Privy Council approving thereof, and dated 17th July, 1869.

2. A copy of Despatch of 8th May, 1869, from the Col. Minister to His Excellency the Governor General.

3. Copy of letter from Under Secretary of State to Law Officers of the Crown, dated 27th April, 1869, and letter from Law Officers of the Crown, dated 4th May, 1869, with their opinion, addressed to the Right Honourable the Earl of Granville, Colonial Minister.

With respect to chapter 3, intituled: "An Act to define the privileges, immunities and powers of the Legislative Assembly, and to give summary protection to persons employed in publication of Sessional Papers," it is said the powers of the legislature of Ontario are strictly limited to those conferred by the 92nd, 93rd, 94th and 95th clauses of the Union Act, that there is no general power conferred on the respective local legislatures to enact laws for the good government of the provinces, as there has been to the general or Dominion legislature; and that the expressed provision contained in the 18th section of the Union Act, granting to the Senate and House of Commons of Canada, and to the members thereof respectively, "shall be such as are from time to time defined

by the Act of the Parliament of Canada, but so that the same shall never exceed those, at the passing of this Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof," shows that without such a provision the Parliament of Canada could not have passed such an Act. On these grounds it has been concluded that the Ontario Statute under consideration, is in excess of the powers of the Ontario legislation.

To justify this conclusion, it is said that if the local legislature can pass such a law, because it is not transmitted, it may pass a law exceeding the limitation which has been placed on the Dominion Parliament by the 18th section of the Union Act.

It may not be quite easy to define precisely what power the local legislature may or may not lawfully exercise on the very numerous subjects which are within its jurisdiction.

It cannot be denied that the legislature must possess the power, if not by mere regulation, by statute, at any rate, to provide for the orderly course of its proceedings; for freedom from arrest of its members whilst attending their duties, and for a reasonable time before and after each session; for freedom of speech, not only against the Crown, but against private persons; for the right to publish and distribute generally such matters as may be deemed conducive to the public interest, without the risk of suit for publishing what might be otherwise deemed to be defamatory; and for the punishment of all persons guilty of contempt in the face of the House, or before its committees.

For without such protection the legislature would be unable to maintain its dignity, and would be more feeble than a justice of the peace, who has a right to punish for offence committed at his petty sessions.

ther than authorizing an inquiry to be made into the judge's conduct, as it declares that the Lieutenant-Governor may, on being satisfied in Council of the truth of the charge, remove the judge from his office, which was a power before the late union, to be exercised by the Governor.

The question then is, had the legislature of Ontario the authority to confer the power of removal on the Lieutenant-Governor, as well as the power to investigate complaints against County Court judges; or by the late Union Act, is the power of removing these judges to be exercised by the Governor General, or by the Lieutenant-Governor?

The 12th section of the Union Act provides, that "all powers, authorities, and functions which, under any Act of the legislature of Canada, are, at the union, vested in or exercisable by the respective Governors or Lieutenant-Governors of those provinces, by those Governors or Lieutenant-Governors individually shall, as far as the same continue in existence, and capable of being exercised after the union, in relation to the Government of Canada, be vested in and exercisable by the Governor General individually, as the case requires, subject, nevertheless, to be abolished or altered by the Parliament of Canada."

The like enactment is contained in the 65th section of the Act applicable to the province of Ontario, conferring all powers on the Lieutenant-Governor which were at the union, vested in or exercisable by the Governor of Upper Canada and Lower Canada, as far as the same are capable of being exercised after the Union, in "relation to the Government of Ontario," shall be vested in and exercisable by the Lieutenant-Governor.

The question is—is the removal of the County Court judges for cause, a matter in relation to the Government of Canada, or a matter in relation to the Government of Ontario?

The Governor General appoints the judges, and the Dominion pays them, by the express provisions of the Union Act.

The general rule is that the power which appoints may also remove.

There are reasons why it may be urged that the Governor General should alone remove, and why the tenure of such offices should therefore be considered to be a matter relating to the Government of Canada.

On the other hand, the legislature of Ontario has alone jurisdiction over "the administration of justice in Ontario, including the constitution, maintenance, and organization of provincial courts, both of civil and criminal jurisdiction."

The legislature of Ontario maintains the County Courts, and can alter their constitution or abolish them; and the Lieutenant-Governor has authority, for what the undersigned has before said, to hold inquisition of all complaints against these judges, for the purpose of enabling it to be determined whether they should be removed or not. Independently, therefore, of the arguments before submitted, relating to the tenure of these offices being vested in the legislature of Ontario, which would conclude the question, there is strong reason for believing that the tenure of these judges, and their removal for cause, should be held to be a matter relating to the general government of Ontario, and not a matter relating to the general government of the Dominion.

In taking a review of the particular question, the undersigned is of opinion there is not the inconsistency in the section of the statute, which it has been stated appears there, for the Governor General to remove without cause, is not opposed to the power of removal by the Lieutenant-Governor for cause.

If it be supposed or insisted upon that the inconsistency suggested is so manifest to require amendment, the section can be altered to meet the difficulty raised.

The legislature of Ontario has power to regulate the tenure of office of the County Court judges, because the tenure is a matter which has been especially delegated to it by the Union Act.

And the Lieutenant-Governor may remove for cause, because the removal is, by the Union Act, a matter relating to the government of Ontario, and not to the general government.

The Lieutenant-Governor, under section 65 of the Union Act, would have had the power, and not the Governor General, upon an adverse finding of the Court of Impeach-



ment, if that court had still been in existence, the powers of that court having been, in effect, transferred to the Lieutenant-Governor in Council. The Lieutenant-Governor may now, by virtue of section 65, remove the County Court judges.

The undersigned, on consideration of the whole question, suggests that the section of the Act of last session objected to, should be amended, by enacting that the said judges shall hold their offices during good behaviour, but shall be subject to be removed by the Lieutenant-Governor for inability, incapacity or misbehaviour, established to the satisfaction of the Lieutenant-Governor in Council.

Chap. 1, 32nd Vic.—With respect to section 6 of this Act, which relates to the increase of salary made to the judges of the Superior Courts, and which is in the following words: "And whereas, under the altered circumstances of the country and the increased expense of living, it has been found that the judges of the Superior Courts are inadequately paid, be it therefore enacted that there shall be paid for the year one thousand eight hundred and sixty-nine, and for every year thereafter, out of the Consolidated Revenue Fund of this province, annually to the president or chief justice of the Court of Error and Appeal, and to each of the judges of the Superior Courts of Law and Equity in this province, the sum of one thousand dollars."

That it has been objected, the judges of these courts cannot properly, and without a breach of the provisions of the Union Act, receive emoluments of any kind, from any but the power which appoints and pays them the legal salary attached to their judicial positions.

The meaning of this objection, no doubt is, that the only power which can legally pay these judges in Ontario, is the Dominion Government.

As a matter of policy, apart from the legal consideration of the question, it may be conceded that the judges should be paid only by the general government for the performance of those duties which necessarily attach and belong to them as judges of the courts to which the Governor General nominates them.

If, however, the local legislature establish a new court, and appoint the judges of the Superior Courts to discharge the duties of it, there is no objection that occurs to the undersigned against the legislature allowing to the judges, a special compensation for the extra duties cast upon them.

The judges are prohibited from taking fees of any kind unless from the Crown. But when the local legislature awards the payment, it is on a footing of a grant from the Crown, as well as when payment is made by the General Government.

Now, the Government of Canada has no power over the Ontario Court of Error and Appeal, or over the judges of that court.

There is nothing, therefore, in the opinion of the undersigned, to prevent the Ontario legislature granting to the judges of that court such compensation as they may think proper for the services which they specially render as judges thereof.

An additional allowance, the undersigned has been informed, was spoken of by the late government of Canada, as proper to be made to the judges, as judges in appeal, and those extra and very onerous, but unrequited services, were, in the consideration of those who took part in the addition in question and influenced them in their action, though such fact was not embodied in the statute itself.

The undersigned, therefore, suggests that it would be advisable to amend the sixth section of the Act objected to, by making the addition of one thousand dollars to the yearly salary of the judges as compensation, specially for their services as Judges of the Ontario Courts of Error and Appeal.

J. S. MACDONALD.

1st September, 1869.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 23rd October, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd October, 1869.

The undersigned has had before him the minute of Council of the Government of Ontario, bearing date 21st September, 1869. This minute embodies and concurs in the



Report of the Honourable the Attorney General of Ontario, on the correspondence between the general and provincial governments, on three Acts of the legislature of Ontario, passed last session, viz.:—32nd Vict., cap. 3; 32nd Vic., cap. 22; 32nd Vic., cap. 1.

The report of the Attorney General, which is a very able state paper, discusses at length the objections taken by the undersigned to those Acts, in his report to your Excellency of the 14th July last, and makes certain suggestions with respect to future legislation on the subjects of the three measures.

These suggestions are worthy of all consideration, should the legislature of Ontario pass measures founded upon them. It will answer, however, no good purpose to enter into their consideration at present.

Your Excellency, on receiving the report of the undersigned, thought it expedient to submit the three Acts in question to Her Majesty's Government, for the purpose of obtaining the opinion of the law officers of the Crown, and receiving specific instructions with respect to them.

The Attorney and Solicitor General of England having reported that, in their opinion, it was not competent for the legislature of Ontario to pass those Acts, or any of them, and such report having been transmitted by the Secretary of State for the Colonies, for your guidance and action, no other course is left to your Excellency than to disallow the measures, unless they are repealed by the legislature of Ontario at its approaching session.

The undersigned would therefore recommend that a despatch be sent to the Lieutenant-Governor of Ontario to that effect, stating at the same time that, should the legislature of Ontario, after repealing those Acts, or any of them, pass other measures on the same subjects, your Excellency will cause them to be taken into immediate consideration, with an anxious desire to meet the views of the legislature.

It will of course, be necessary that these Acts, if repealed, should be repealed unconditionally, and any substituted legislation embodied in separate bills.

The undersigned further recommends that a copy of the minute of Council founded on this report be transmitted to the Lieutenant-Governor of Ontario, and that he be requested to inform your Excellency of the course proposed to be adopted by his advisers with regard to the three Acts.

All which is respectfully submitted.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 30th October, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th October, 1869.

The undersigned has the honour to report, that after full consideration, he is of opinion that the following Acts, passed by the legislature of the province of Ontario at its second session (32nd Vic.) should, in addition to those mentioned in his reports of the 19th February and 12th July last, be left to their operation, viz.:—

32 Vic., cap. 6.—The Law Reform Act of 1868.

32 Vic., cap. 21.—An Act respecting Elections of Members of the Legislative Assembly.

32 Vic., cap. 26.—An Act to repeal certain Acts and enactments therein mentioned, and to abolish the Court of Impeachment for the trial of County Judges.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 26th November, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th November, 1869.

With reference to the reports of the undersigned of the 14th July and 22nd October last, relating among other things, to the Act passed by the legislature of the

province of Ontario at its last session, being 32nd Vic., chap. 3, intituled: "An Act to define the privileges, immunities and powers of the Legislative Assembly, and to give summary protection to persons employed in the publication of Sessional Papers."

And with reference also to the correspondence with the government of Ontario on the subject, the undersigned has now the honour to report that, in his opinion, it was not competent for the legislature of the province of Ontario to pass such Act, and he therefore recommends that the same should not receive the confirmation of your Excellency.

All of which, &c.

JOHN A. MACDONALD.

[*Proclamation disallowing Act above mentioned, published in the Canada Gazette, on the 4th December, 1869. Vol. III, No. 23, p. 386.*]

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 20th January, 1870.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th January, 1870.

With reference to the Act passed by the legislature of the province of Ontario, at its second session, 32 Vic., cap. 1, intituled, "An Act for granting to Her Majesty certain sums of money required for defraying the expenses of Civil Government for the year 1869, for making good certain sums expended for the Public Service in 1868, and for other purposes," the undersigned has the honour to report, as follows:—

That on the 14th July last he reported, that, in his opinion "the 6th section of the said Act is objectionable." Such 6th section is as follows:—

"And whereas, under the altered circumstances of the country, and the increased expense of living, it has been found that the judges of the Superior Courts are inadequately paid: be it therefore enacted, that there shall be paid, for the year one thousand eight hundred and sixty-nine, and for every year thereafter, out of the Consolidated Revenue Fund of this province, annually, to the president or chief justice of the Court of Error and Appeal, and to each of the judges of the Superior Courts of Law and Equity in this province, the sum of one thousand dollars."

He further reported, that "as by the 96th and 100th sections of the Union Act, it is provided, that the Governor General shall appoint the judges of the Superior Courts, and the Parliament of Canada shall fix and provide their salaries, allowances and pensions, it would seem that the judges of those courts cannot properly, and without a breach of its provisions, receive emolument of any kind from any but the power which appoints and pays them the legal salary attached to their judicial positions."

With that report was also submitted the opinion of the Attorney and Solicitor General of England, that it was not competent for the legislature of Ontario to pass this section.

Thereupon, by a despatch from the Secretary of State for the Provinces to the Lieutenant-Governor of Ontario, bearing date the 26th of October, 1869, he was informed that no other course was left to your Excellency, on the opinions of the law officers of the Crown in England, than to disallow this measure, unless it was repealed by the legislature of Ontario at its approaching session.

It was at the same time stated, that should the legislature of Ontario, after repealing the Act, pass another measure on the same subject, your Excellency would cause it to be taken into immediate consideration, with an anxious desire to meet the views of the legislature; but, that it would, of course, be necessary that the Act, if repealed, should be repealed unconditionally, and any substituted legislation embodied in a separate bill.

The legislature of Ontario, at its last session, passed a bill intituled:—

"An Act to remunerate certain members of the Court of Error and Appeal;" by the 1st section of which, the 6th section of the Act first above mentioned is repealed; but, in the same Act, there is contained a provision that the sum of one thousand

dollars per annum shall be paid to the chief justice of appeal and other members of the Court of Error and Appeal, being also commissioners under the Heir, Devisee and Assignee Commission.

As the salaries thus provided for the chief justice and judges of the Court of Appeal are payable to the same persons as those mentioned in the 6th section of the previous Act, it will be necessary for your Excellency, under your instructions, to submit the measure for the sanction of Her Majesty.

Her Majesty may not be advised to give her sanction, and in such case, on the disallowance of the Act, section 6 of the previous Act would revive.

Before Her Majesty's pleasure can be received, the year will have expired within which it is competent for your Excellency to disallow the Act first above mentioned, the last day for disallowance being the 26th day of January instant, and it would then remain on the statute-book, although declared to be unconstitutional, and beyond the jurisdiction of the local legislature.

No other course is therefore left for your Excellency than to disallow the Act in question without delay.

The Act so to be disallowed is the Supply Bill for the year 1869, but as all payments made under it during its continuance are legal, and, as it provides that any appropriation made under it, which shall be unexpended on the 31st day of December, 1869, shall become void and of no effect, no inconvenience will be suffered by the Government of Ontario by the disallowance.

All which is respectfully submitted.

JOHN A. MACDONALD.

*[Proclamation disallowing the Act above mentioned published in the "Canada Gazette" on the 22nd day of January, 1870. Vol. III, No. 30, p. 520.]*



## ONTARIO, 33RD VICTORIA, 1869.

### 3RD SESSION—1ST PARLIAMENT.

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 21st January, 1870.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th January, 1870.

With reference to the Imperial British North America Act, 1867, and also to the Order in Council of the 9th June, 1868, on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report:—

That in his opinion all the Acts passed by the legislature of the province of Ontario in the third session thereof (33rd Vic.), with the exception of those mentioned in the schedule hereunto annexed, are free from objection of any kind. He therefore recommends that the same be left to their operation.

The Acts named in the schedule above referred to will be the subject of a further report.

All of which is respectfully submitted.

JOHN A. MACDONALD.

### SCHEDULE.

- Cap. 12.—An Act to amend an Act passed in the Session held in the 32nd year of the reign of Her Majesty, entitled: "An Act to amend Cap. 15 of the Consolidated Statutes of Upper Canada, intituled: 'An Act respecting County Courts.'"
- Cap. 71.—An Act to exempt from Municipal taxation, for a certain period therein mentioned, a Sugar Refinery proposed to be erected in the city of Toronto.
- Cap. 5.—An Act to remunerate certain Members of the Court of Error and Appeal.
- Cap. 19.—An Act to amend the Law relating to Bills of Lading.
- Cap. 11.—An Act respecting proceedings in Judges' Chambers at Common Law.
- Cap. 24.—An Act to provide for the organization of the Territorial District of Parry Sound.
- Cap. 28.—An Act to amend the Act intituled: "An Act respecting Tavern and Shop Licenses."

### MEMORANDUM.

In consequence of the illness and absence of the Minister of Justice, the Acts mentioned in the foregoing schedule were not reported upon, and a year having elapsed since their receipt, by the Governor General, they are now left to their operation, subject, of course to any objection that may be raised to their constitutionality.

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## ONTARIO, 34TH VICTORIA, 1870-71.

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4TH SESSION—1ST PARLIAMENT.

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*Lieutenant-Governor Howland to the Under Secretary of State for the Provinces.*

GOVERNMENT HOUSE, TORONTO, 27th February, 1871.

SIR,—I have the honour to transmit herewith, for the consideration of his Excellency the Governor General, certified copies of the bills passed at the fourth session of the first Parliament of Ontario, and to which my assent has been given.

I also inclose a petition presented to me in reference to the bill intituled: Chapter 99, "An Act to confirm the Deed for the Distribution and Settlement of the Estate of the Honourable George Jervis Goodhue deceased.

The petition sets forth the objections which were urged against the bill, and prays that it may not receive the royal assent.

I regard the principle involved in the bill and sanctioned by the assembly as very objectionable, and forming a dangerous precedent; but in the absence of instructions, and upon the advice of my council I gave it my assent.

I have, &c.,

W. P. HOWLAND,  
*Lieutenant-Governor.*

*Memorial of Mr. Becher to the Lieutenant-Governor of Ontario, re Chapter 99.*

To His Excellency the Honourable William Pearce Howland, Companion of the Most Honourable the Order of the Bath, Lieutenant-Governor of the province of Ontario, &c., &c., in Council.

The humble petition of Henry C. R. Becher, of the city of London, in the said province, Esquire, one of the executors and trustees under the last will and testament of the Honourable George Jervis Goodhue, deceased, most humbly sheweth—

That a bill intituled: "An Act to confirm the Deed for the Distribution and Settlement of the Estate of the Honourable George Jervis Goodhue, deceased," has been passed by the legislature of Ontario, and will be shortly brought before your Excellency for the royal assent.

That your petitioner, as one of the executors and trustees of the said will, opposed the said bill from its introduction into the legislature by all means in his power, but without avail; and your petitioner's co-trustee, Verschoyle Cronyn, Esquire, though he did not petition the legislature against the passing of the said bill, or oppose the same, as your petitioner did, nevertheless expressed his dissent to the application for the said bill.

That the enactments of the said bill give into the immediate and absolute possession and enjoyment of the six children of the testator, money and other personal property, and real property to the amount of upwards of ninety thousand pounds, which, by his will, he directed should accumulate, and, with the accumulations, be held by his executors in trust for all his children who shall be living on the death of his wife, in equal shares, and the child or children of such of them as may then be dead, in equal shares, such grandchild or grandchildren to be entitled to the share his, her or their father or mother would have been intitled to if living.

That there are many grandchildren of the testator, all infants, five of his children having children, and the rights of such grandchildren under the will are, by the enactments of the said bill, all taken away and destroyed.

The enactments of the said bill also take away the security provided by the testator of the whole of his residuary estate, for the making good at the time his wife shall die, of any loss or deficiency that may arise in the investment of \$172,000, under six deeds of settlement in the will mentioned, in favour of his children and grandchildren, and substitute for such security the sum of ten thousand dollars only.

That the enactments of the said bill are, your petitioner humbly submits, beyond the powers of the said legislature, and unconstitutional, in depriving persons of rights and property without their consent, and without any compensation whatever.

That one or more, or all of the said six children of the testator to be benefited by the said enactment might possibly never be entitled at all to anything under the said will, their being entitled at all depending entirely upon the contingency of their surviving their mother.

Your petitioner has annexed hereto a copy of the probate of the said will granted in Ontario.

That in addition to the lands in Illinois, in the United States of America, mentioned in the said bill, and thereby directed to be apportioned and conveyed, there are other lands in the said state, part of the estate of the said testator, whereof he died seized, and which passed and are yet held under his will, the same having been duly executed according to the laws of Illinois, to pass real estate, of the value of sixteen thousand dollars or thereabouts, and also a debt secured by mortgage on lands thereof, \$8,000, and the probate of the said will has been registered in the said state.

And, further, the testator died possessed of about \$10,000 United States Government bonds, which passed and are yet held under the will.

That at the time of the testator's death he held in England twenty thousand pounds sterling and upwards, in three per cent consols, which passed under his will; ten thousand five hundred pounds whereof are yet held under the said will, the residue having been sold out and the proceeds brought to Canada for investment by your petitioner and his co-trustees, to whom probate of the said will was granted by the Court of Probate in England, as well as in Ontario.

That your petitioner humbly submits to your Excellency, that, independently of what he has already submitted, the said bill is, on the face of it, beyond the power of the legislature in relation to the lands therein mentioned in Illinois. That the said lands in Illinois and the said other lands there, the said United States bonds, and the said three per cent consols are not, or some of them are not, within the scope or meaning of the words "property or civil rights" in the province.

That at the time of, and up to the passing of the said bill, and for some years before, two of the daughters of the said testator and their children, all of them British subjects, have resided and still reside, and were and yet are out of the Dominion of Canada; one of them, Louisa M. Watson, and her children, in the city of New York, in the United States of America; the other, Maria Eliza Tovey, and her children, in Plymouth, in England.

And your petitioner humbly submits to your Excellency that the said children of the said Louisa M. Watson and Maria Eliza Tovey, not so residing in the Dominion of Canada, are persons within the meaning of the published instructions to the Governor General of the Dominion of Canada, under section 55 of "the British North America Act," in effect part of that Act directing to be reserved for the royal assent, or disallowed "any bill of an extraordinary nature and importance \* \* \* \* whereby \* \* \* the rights and property of our subjects not residing in our said Dominion may be prejudiced."

That there is no good or sufficient ground or reason whatever, either mentioned in the bill, or, in fact, for the setting aside the provisions and intentions of the testator, and the passing of the said bill—the reason being that the testator's children desire to take his bounty, not as he gave it, but as they prefer to take it.



That the said bill is of a most extraordinary nature, and, unlike all other bills hitherto passed in relation to wills, it destroys, instead of aiding the will.

That the legislature seemingly impressed with this or some other feeling in relation to the said bill, have since its passing, originated and are unanimously carrying a bill for the submitting of all private estate bills to commissioners, to be appointed from the judges of the Superior Courts; and your petitioner humbly submits that this bill should be reserved for a future parliament, to be submitted to the test of such commissioners.

And your petitioner further states that the Honourable the Attorney General, the Honourable the Commissioner of Crown Lands, and the leader of the Opposition in the said legislature, all voted against the said Goodhue Estate Bill.

That for the reasons hereinbefore given, or appearing, or some, or one of them, your petitioner humbly submits to your Excellency that the deed by the said bill, sought to be confirmed and made valid, cannot, by the said bill, be "confirmed and made valid"; and your petitioner and co-trustee "cannot carry into effect the several provisions thereof, and be saved harmless and indemnified" in the premises; and the said bill would be no protection to your petitioner against the future claims of the grandchildren.

And, in addition to such reasons against the said bill becoming law, your petitioner humbly craves your Excellency's reference to the printed objections hereto annexed, marked "Appendix C."

And your petitioner humbly prays that your Excellency will graciously be pleased to take all the premises into your favourable consideration, and either refuse to assent to the said bill, or, as a measure causing injury to no one, and reserving time for a careful and well considered decision, where the Constitution provides (time that your Excellency may not have to give, owing to the close termination of the present session of Parliament) that you will be pleased to reserve the said bill for the signification of the Governor General's pleasure.

And, as in duty bound, your petitioner will ever pray.

HENRY C. R. BECHER.

LONDON, ONTARIO, 11th February, 1871.

## APPENDIX C.

*Summary of objections to the Bill. The Act asked for is without precedent, unnecessary and a violation of the rights of Property.*

1. It is without precedent.—No construction has been suggested which cannot be readily carried out as regards the whole will, without the aid of a statute, and without prejudice, either to public or private interests. The delay required in order to settle the construction in the ordinary way, cannot injure the property or individuals, more than in the case of every other will. Under such circumstances, there is no instance of Legislative interference, and each of the cases referred to, will be found clearly distinguishable on one or other of the grounds above mentioned.

2. It is unnecessary.—(1.) As regards the law, assuming the legal construction of the will to be as the promoters suggest, the interference of the legislature is not called for, for our courts will place that construction upon it, and the trustees will carry it out. Assuming it to be otherwise, as the trustees are advised, it is improper, for there

is no reason why the law should not be followed. The argument that because opinions differ on the will, long litigation will be required to settle its meaning, would apply equally to every other case of a doubtful devise, and would substitute the legislature for the courts. This argument, moreover, is founded on the assumption, that in the event of our courts deciding the fund to be distributable at once, the trustees would have to go to the Privy Council before acting on such decision. From this view of their duty, they (or Mr. Becher at all events), entirely dissent. They will act without hesitation under any decision of our courts, as all other trustees in Canada do, and as they are advised they may do with perfect safety. They believe, however, that no decision such as the promoters of the bill desire will be given, because it would be contrary to law, and it seems plain that no confidence can be felt in the possibility of obtaining it, or it would have been asked for, before coming to the legislature. The suggestion that the trustees would necessarily carry the case to the Privy Council, is in fact a mere imaginary difficulty, and if it be not felt to be such by those who make it, why do they not put it to the test, by first getting an order from the Court of Chancery for distribution, and deferring this application until the trustees show a disposition to decline acting under it. Any decision in any other case, where the matter in controversy exceeds \$4,000, would be subject to the same difficulty suggested here; it might be appealed to the Privy Council and reversed; and the argument therefore in effect is, that where the interest involved is of that value, no trustee should act, and no title can be considered safe under the judgment of any Canadian court. Is our legislature prepared to affirm this?

2. As regards the facts, there is no suggestion of necessity; there are no debts due by the estate; no annual outlay not provided for; no land tied up, for the trustees are directed to sell and invest the proceeds. The sole question is, whether the promoters shall have the proceeds immediately, without regard to the will, or when they become entitled under the will (which some of them may never be) and they assert no reason whatever, why the legislature should give them this money at once, whether the testator so willed or not, except their own desire to possess it.

3. It is a clear violation of the rights of property.—There are five daughters and a son of the testator now living, all of whom, except one, have infant children. By the will, should a son or daughter die during the widow's lifetime, leaving children, on the decease of the widow, could take their parents' share (in this Mr. Cameron agrees with the counsel for the trustees.) By the Act, it is proposed now to distribute the fund among the testator's children absolutely. One or more may dispose of or spend their share while the widow lives, and then die leaving children, in which event such children will be deprived of the property which, but for the Act, would have been theirs under the will. In other words, the children of each parent have now a right to their parents' share, should such parent die before the widow and this right the Act takes from them.

Moreover, it is conceded, by Mr. Cameron at least, that should any child die without issue during the widow's life, such child would never become entitled to anything, while it is now proposed by the statute to give him his share absolutely. It may be added that the fact of five of the testator's children being daughters, and the possibility of a second marriage of a son-in-law during the lifetime of the widow, makes it the more prudent to protect the rights of the grand-children, and may have influenced the testator in making the provision found in his will for that purpose.

Suppose the testator, instead of making this will, had, while living, settled the money in the same terms, would any one then have ventured to assert the justice of interfering with it, either during, or after his lifetime? And why are not his wishes, as expressed in his last will, to be at least equally binding?

In *Sidmouth vs. Sidmouth*, 2 Beav. 456, Lord Langdale says:—

"The parent may judge for himself when it suits his own convenience, or when it will be best for his son to secure him any benefit which he voluntarily thinks fit to bestow upon him, &c."



*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd September, 1871.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th September, 1871.

With reference to the Imperial "British North America Act, 1867," and also to the Order in Council of the 9th June, 1868, on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report :

That in his opinion all the Acts passed by the legislature of the province of Ontario, in the session held in the 34th year of Her Majesty's reign (1870) being the fourth session of the first Parliament of Ontario (with the exception of those under-mentioned, which will be the subject of a further report), are free from objection of any kind. He therefore recommends that the same be left to their operation.

The following are the exceptions above alluded to :—

Cap. 4.—An Act to provide for the organization of the Territorial District of Thunder Bay.

Cap. 17.—An Act to provide for the establishment and government of a Central Prison for the province of Ontario.

Cap. 48.—An Act to enable the Municipalities along the line of the Grand Junction Railway Company to grant aid thereto, and to legalize certain by-laws granting aid to the said Company.

Cap. 75.—An Act to incorporate the Simpson Loom Company (Limited).

Cap. 99.—An Act to confirm the Deed for the distribution and settlement of the Estate of the Hon. George Jervis Goodhue, deceased.

All of which is respectfully submitted.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd February, 1872.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd February, 1872.

With reference to the report of the 18th September last, on the subject of the Acts passed by the legislature of Ontario, in the 34th year of Her Majesty's reign, the undersigned has the honour further to report, as follows :—

Chapter 4.—With respect to chapter 4, intituled : "An Act to provide for the organization of the Territorial District of Thunder Bay," the undersigned thinks it well that the attention of the government of Ontario should be called to the *proviso* in the 13th section, which enacts that "no appeal shall be from any judgment or decision of the stipendiary magistrate."

This would seem to be an enactment affecting procedure in criminal matters, and if so, it is *ultra vires*.

Chapter 17, intituled : "An Act to provide for the establishment and government of a Central Prison for the province of Ontario," seems also, in several of its clauses, to deal with matters of criminal procedure, and especially in the 13th, 14th, 15th and 38th clauses.

The attention of the provincial government should be invited to this Act with the view of amendment, unless it is considered advisable that a confirmatory Act should be passed by the Parliament of the Dominion.

This latter course the undersigned thinks the better one, as the Act in question will be of great advantage in furthering and aiding the proper administration of criminal justice.

Chapter 48, intituled : "An Act to enable the municipalities along the line of the Grand Junction Railway Company to grant aid thereto, and to legalize certain by-laws granting aid to the said Company."



Petitions have been received for the disallowance of this Act, but as it is within the competence of the provincial legislature, the undersigned recommends that it be left to its operations.

Chapter 99.—“An Act to confirm the Deed for the Distribution and Settlement of the Estate of the Honourable George Jervis Goodhue, deceased.”

This Act has also been petitioned against, but for the same reason as that given with respect to chapter 48, the undersigned recommends that it be left to its operation.

Chapter 75, intituled: “An Act to incorporate the Simpson Loom Company (Limited).”

The second clause of this Act seems to be beyond the jurisdiction of the local legislature, as it affects the patent laws. The undersigned does not, however, recommend the disallowance, leaving the matter to be adjudicated upon by the legal tribunals.

Chapter 19, intituled: “An Act relative to Government Road Allowances, and the quantity of Crown Timber Licenses therefor.”

A petition has been received from the municipal council of the county of Frontenac, praying for the disallowance of this Act, but, as it is clearly within the competence of the local legislature, the undersigned recommends that it be left to its operation.

All which is respectfully submitted.

JOHN A. MACDONALD.

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## ONTARIO—35TH VICTORIA, 1871-72.

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### 1ST SESSION—2ND PARLIAMENT.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 10th January, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th January, 1873.

The undersigned, to whom was referred certified copies of the Acts passed by the legislature of the province of Ontario, in the session held in the 35th year of Her Majesty's reign, and assented to by the Lieutenant Governor on the 2nd March last, has the honour to report as follows:—

Chapter 13, intituled: "An Act to provide for the institution of suits against the Crown by Petition of Right, and respecting procedure in Crown suits."

With respect to this Act, the undersigned recommends that the attention of the Government of Ontario be called to the fact that it is so general in its terms, that it may be held to apply to claims against the Government of the Dominion.

It is presumed that this is not the intention, as the second clause of the Act provides, that the fiat for a petition of right must be granted by the Lieutenant-Governor of the province. Now, it is obvious that in case of claims against the Dominion, the fiat should be granted by the Governor General. The passing of a short Act removing the doubt is suggested.

Chapter 36, intituled: "An Act for the prevention of corrupt practices at Municipal Elections."

The 17th section of the Act appears, to the undersigned, to be objectionable, on the ground that it seems to deal with the evidence to be received in criminal proceedings, and is, therefore, beyond the competence of the provincial legislature. The attention of the Government of Ontario should be called to this, with a view to its amendment in the ensuing session of the legislature.

Chapter 37, intituled: "An Act to establish Municipal Institutions in the Districts of Parry Sound, Muskoka, Nipissing and Thunder Bay."

While the undersigned recommends that this Act should be allowed to go into operation, he thinks it well that the 26th section should be brought under the notice of the local government. The undersigned doubts the power of the provincial legislature to give a municipal council power to pass by-laws limiting the number of licenses for the sale of intoxicating liquors. Such legislature has the power of making laws respecting licenses in order to the *raising of a revenue*, and apparently for no other purpose. If it cannot itself limit the number of licenses to be issued, it would seem that it cannot confer that power on a municipal council.

With these exceptions, all the said Acts appear to be unobjectionable.

The undersigned has, therefore, the honour to recommend that all the said Acts, except chapters 13 and 36, be left to their operation, and that with respect to those two Acts, further communication from the Ontario Government will be waited for.

JOHN A. MACDONALD.

### MEMORANDUM ON ABOVE REPORT.

On further consideration of Act 35 Vict., chap. 13, it was the opinion of the Minister of Justice, that it can only be held to apply to litigation, in matters within the jurisdiction, and could not be held to the Crown in Dominion matters, and that it was therefore unobjectionable.

The Act 35 Vict., chap. 36, has been amended in accordance with the suggestion made in the preceding report. The clause 17, above objected, being amended by 164th section of statute 36 Vict., chap. 48, it is now unobjectionable *quoad* the clause objected to.





For Report of Executive Council of Ontario referred to in  
Despatch of Lieutenant-Governor of Ontario, dated 16th January  
1874, see Appendix C, pages 1324-1326.

## ONTARIO, 36TH VICTORIA, 1873.

### 2ND SESSION—2ND PARLIAMENT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 30th August, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th August, 1873.

With reference to the Acts passed by the legislature of the province of Ontario in the session held in the thirty-sixth year of Her Majesty's reign, being the second session of the second legislature of that province, the undersigned has the honour to report :—

That after a careful examination of the Acts in question, he is of opinion that, excepting chapters 2, 3, 4, 31, 35, 47, 48 and 50, they are all unobjectionable.

With respect to chapter 2, intituled : "An Act to amend the Law respecting elections of Members of the Legislative Assembly; and respecting the trial of such elections," the 7th and 11th sections are *ultra vires*, as they declare certain actions of election agents and candidates to be misdemeanours. (See reply to this report, by Executive Council of Ontario, in despatch of the Lieutenant-Governor, Ontario, to Secretary of State, 16th January, 1874.)

This is legislation as to criminal law, which is beyond the jurisdiction of the provincial legislature.

The undersigned recommends that the attention of the Government of Ontario be called to these two clauses, with the view of having them amended at the next session of its legislature; meanwhile the undersigned does not propose that the Act should be disallowed.

He also recommends that chapter 31 intituled : "An Act to make further provision as to the custody of insane persons," be brought under the notice of the local government.

The Act appears to be unobjectionable, except as regards the 29th section.

That clause provides that "upon the appearing to the Lieutenant-Governor that an insane person has come, or been brought into the province, from some other province or country, the Lieutenant-Governor, by his warrant, may authorize the removal of such insane person back to the province or country from whence he has been brought."

It is believed that the provincial legislature has no power to authorize any such extradition. For the purpose of authorizing an insane or any person to be removed from one province of the Dominion to another, legislation must be procured from the Parliament of Canada; and for the purpose of removing out of the Dominion, an Act must be passed by the Imperial Parliament.

The attention of the provincial government is also invited to cap. 35, intituled : "An act to provide for the incorporation of Emigration Aid Societies in the Province of Ontario."

By the 13th section it is provided that certain written contracts entered into by an immigrant can be enforced by civil suit; and also that the refusal by such immigrant to perform certain obligations undertaken by him, shall be an offence cognizable before a justice, and punishable by fine, and imprisonment until the fine be paid; the clause further enacting that the payment of such fine shall not prevent or affect any civil remedy under the contract.

The use of the word "offence" in this clause, and the conviction for such offence being placed in contrast to a civil remedy, would appear to make conviction by the justice a criminal proceeding. The undersigned would beg leave to suggest the inexpediency of describing, in provincial statutes, any breach of the law of the province, as an offence.

The 15th paragraph of the 19th section of "The British North America Act, 1867," enables a provincial legislature to make laws in relation to the imposition of punishment by fine, penalty or imprisonment, for enforcing any law of the province.

The word "offence" in legal parlance seems to imply a breach of the criminal law, and when not expressly declared to be treason or felony, may be considered as synonymous with misdemeanour.

On reference to the 15th section of the same Act, it will be seen that it also deals with the criminal law, by declaring that certain false statements shall be misdemeanours, punishable as wilful and corrupt perjury.

Chapter 50, intituled "An Act to organize the Municipality of Shuniah, and to amend the Act for establishing Municipal Institutions in Unorganized Districts," seems to be unobjectionable, if the territory included in such municipality shall, when the western boundary of Ontario is settled, proved to be within the limits of that province.

The undersigned desires to bring this under the notice of your Excellency and of the Local Government of Ontario, lest, by your Excellency allowing the Act to go into operation without remark, it might be held to be an acquiescence in the extent of territory claimed for the province.

The undersigned, therefore, begs leave to recommend that all the Acts of the said session, except chapters 3, 4, 34, 47 and 48, which will be reported upon hereafter, and chapters 2, 31, 35 and 50, to which the attention of the Government of Ontario is invited in this report, with a view to their amendment in the ensuing session of the legislature, be left to their operation.

All of which is respectfully submitted.

JOHN A. MACDONALD.

NOTE.—Chaps. 3, 4, 34, 47 and 48 do not appear to have been subsequently dealt with by the Minister of Justice.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th August, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th August, 1873.

The undersigned has had under consideration two Acts passed by the legislature of the province of Ontario, at its last session, entitled respectively :

"An Act to incorporate the Loyal Orange Association of Western Ontario," and "An Act to incorporate the Loyal Orange Association of Eastern Ontario," which were reserved by the Lieutenant-Governor for the assent of Your Excellency, and now begs leave to report :

That these Acts purport to incorporate two provincial associations.

That the only object of these associations, appearing on the face of the Acts, is the holding of property, real and personal.

That this being a provincial object, the Acts are within the competence and jurisdiction of the provincial legislature.

Such being the case, in the opinion of the undersigned, the Lieutenant-Governor of Ontario ought not to have reserved these Acts for your Excellency's assent, but should have given his assent to them as Lieutenant-Governor.

Under the system of Government that obtains in England, as well as in the Dominion and its several provinces, it is the duty of the advisers of the executive, to recommend every measure that has passed the legislature for the executive assent.

The provision in "The British North America Act of 1867," that your Excellency may reserve a bill for the signification of Her Majesty's pleasure, was solely made with the view to protection of imperial interests, and the maintenance of imperial policy,



and in case your Excellency should exercise the power of reservation conferred upon you—you would do so in your capacity as an imperial officer, and under the royal instructions.

So, in any province the Lieutenant-Governor should reserve a bill in his capacity as an officer of the Dominion, and under instructions from the Governor General.

The ministers of the Governor General and of the Lieutenant-Governor are alike bound to oppose in the legislature, measures of which they disapprove, and if, notwithstanding, such a measure be carried, the ministry should either resign, or accept the decision of the legislature, and advise the passage of the bill. It then rests with the Governor General, or the Lieutenant-Governor, as the case may be, to consider whether the Act conflicts with his instructions or his duty as an imperial or a Dominion officer, —and if it does so conflict, he is bound to reserve it, whatever the advice tendered to him may be ; but if not he will doubtless feel it his duty to give his assent, in accordance with advice to that effect, which it was the duty of his ministers to give.

With respect to the present measures, the undersigned is of opinion that the Lieutenant-Governor ought not to have reserved them for your Excellency's assent, as he had no instructions from the Governor General in any way affecting these bills. They are entirely within the competence of the Ontario legislature, and if he had sought advice from his legal adviser, the Attorney General of Ontario, on the question of competence, he would have undoubtedly received his opinion that the Acts were within the jurisdiction of the provincial legislature.

This is evident from the fact that (as appears by Votes and Proceedings of the legislature) the Attorney General voted for and supported the bills as a member of the legislature. Under these circumstances, the undersigned recommends that the Lieutenant-Governor be informed that your Excellency does not propose to signify your pleasure with respect to these reserved Acts, or to take any action upon them. The legislature of Ontario will, at its next session, which must meet before the expiration of the year within which, by the constitution, your Excellency has power to signify your pleasure, have the power, if it pleases, of considering these measures anew, and re-enacting, or rejecting them at its discretion.

If the Acts should again be passed, the Lieutenant-Governor should consider himself bound to deal with them at once, and not ask your Excellency to intervene in matters of provincial concern, and solely and entirely within the jurisdiction and competence of the legislature of the province.

JOHN A. MACDONALD.

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## ONTARIO, 37TH VICTORIA, 1874.

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### 3RD SESSION—2ND PARLIAMENT.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st April, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th November, 1874.

The undersigned has the honour to report upon certain Acts of the legislature of the province of Ontario, passed in the 3rd session of the second Parliament of Ontario, as follows :—

Chapter 5.—“The Ballot Act, 1874.”

Section 27 provides punishment by imprisonment for different offences, amongst which is that of forging, or counterfeiting, or fraudulently altering ballot papers, &c.

It is suggested that it is not within the competence of a legislature to legislate on the subject of forgery, and that this clause will be in conflict with 32nd and 33rd Vic., Chap. 19, or some sections thereof,

Chapter 7.—“An Act to make further provisions for the due Administration of Justice.”

This Act provides for the appointment, in the manner prescribed by “The British North America Act, 1867,” of three additional judges who are to be called Justices of the Court of Error and Appeal.

The 2nd section provides that “the additional judges, so to be appointed, may be selected from the judges, for the time being, of the courts of Queen’s Bench, Chancery and Common Pleas, or from such barristers as are eligible to be appointed judges of those courts.”

It is suggested that this provision, although put in a permissive sense, in so far as it limits the appointment of the judges, to such barristers as are eligible to be appointed judges of the courts mentioned, is *ultra vires*, as by reference to “The British North America Act, 1867,” clause 97, it will be found that the only limit upon the discretion of the Governor General in selecting judges for the several provinces is, that they shall be selected from the bars of the provinces respectively.

It would appear, therefore, that this provision is ineffectual, as being beyond the jurisdiction of a provincial legislature, and that the Governor General would not, in this particular, be bound by such a limitation imposed on him in the appointment to the Bench.

The 5th section deals with the question of rank and precedence. It gives the chief justice of the Court of Error and Appeal rank and precedence over all the other Judges of Her Majesty’s Courts of Law and Equity in Ontario, “and the other judges of the said Court of Error and Appeal appointed under that Act, and the chief justice of Ontario, the chancellor of Ontario, and the chief justice of the Court of Common Pleas, shall have rank and precedence between themselves, according to their seniority of appointment to any of the said offices.”

The undersigned suggests that the question of rank and precedence of functionaries appointed by the Crown, is a matter which can be dealt with solely by the Crown, or by the authority to whom the Crown delegates the same.

There is no delegation to a provincial legislature of the right to grant the same and it can hardly be urged that the precedence of judges can be deemed to be within the subject of the administration of justice within the province, or of the constitution and organization of provincial courts; nor is it a matter of a merely local or private nature in the province.

It is stated by Chitty—"Prerogatives of the Crown"—that the judges, generally speaking, derive their authority only from the Crown. He states also "the Crown alone can create and confer dignities and honours; the King is not only the fountain, but the parent of them."

"To the Crown also belongs the prerogative of raising practitioners in the courts of justice to a superior eminence, by constituting them sergeants, &c., or by granting letters patent of precedence to such barristers as His Majesty thinks proper to honour with that mark of distinction, whereby they are entitled to such rank and pre-audience as are assigned in their respective patents."

Dodd in his *Manual of Dignities*, states that "precedence is part and parcel of the law of England, subsisting under the authority of Acts of Parliament, solemn decisions in courts of justice, or public instruments proceeding from the crown."

"It is to be observed \* \* \* seniority is amongst the leading principles of our system of precedence \* \* \* Dates of patents and commissions determine the precedence which individuals of the same rank take amongst each other, and thus the station and degree of each are ascertained, by means, which rarely admit of controversy or doubt."

"Rank and precedence in England may of course be granted to any person by the supreme power of the legislature; or it may be imparted by an exercise of the royal prerogative in the form of a patent or warrant. Where the legislature is silent, or the sovereign has not thought it necessary to interfere, the particular station confessedly held and fully recognized to belong to any class, may be presumed to rest upon immemorial usage."

In England the rule appears to be undoubted that, unless precedence of judges is fixed by the exercise of the royal prerogative, or by Act of Parliament, they take precedence amongst each other according to seniority of appointment.

If it were necessary to make specific allusions to cases in which the point has arisen, it is believed that many precedents might be cited as being governed by this rule, but the undersigned suggests that the attention of the Lieutenant-Governor be drawn to this matter, with a view of making such amendment to the Act as his government may deem most likely to meet the case.

Chapter 28.—"An Act to amend and consolidate the Public School Law."

Sec. 184 provides that a person willingly making false declaration of his right to vote shall be guilty of a misdemeanour.

It is suggested that this is beyond the provincial legislative competence; and the same remark applies to sec. 189, which provides that offenders, in respect of that section mentioned, may be indicted and punished for any of the offences thereinbefore mentioned as a misdemeanour.

Chapter 32.—"An Act to amend and consolidate the law for the sale of Fermented or Spirituous Liquors."

Section 24 provides that no person shall sell, by wholesale or retail, any spirituous fermented or other manufactured liquors in the province of Ontario without first having obtained a license under the Act authorizing him so to do.

Section 25 provides that no person shall keep, have in any house, &c., any spirituous liquor for sale unless licensed.

Section 26 provides that the last two sections shall not prevent any brewer, distiller, or other person duly licensed by the government of Canada, for the manufacture of liquors, from keeping, having or selling any liquor manufactured by him in any building wherein the manufacture is carried on, &c.; provided that any such brewer, distiller, or other person is further required to first obtain a license to sell by wholesale, under this Act, the liquor so manufactured by him when sold for consumption within



this province, and under which license the liquor may be sold, &c., but so that no such sale shall be in quantities less than those prescribed in section 4 of the Act.

The undersigned suggests that these section are prohibitory in respect of trade and commerce, and recommends that the consideration of the Lieutenant-Governor be invited to this point, with a view to any amendment of the law which his Government may think necessary,

H. BERNARD,

*Deputy Minister of Justice.*

I concur.

T. FOURNIER,

*Minister of Justice.*

*Mr. Assistant Secretary Eckart to the Secretary of State of Canada.*

TORONTO, 6th October, 1875.

SIR,—I am directed to transmit herewith a copy of an Order in Council, approved by his Honour the Lieutenant-Governor, the 5th day of October, 1875, having reference to the report of the late Minister of Justice to his Excellency the Governor General, approved by his Excellency in Council, and communicated to his Honour the Lieutenant-Governor by a despatch from the Under Secretary of State, dated 5th April, 1875, the subject being certain sections of four statutes (chaps. 5, 7, 28 and 32) passed at the third session of the Second Parliament.

I have, &c.,

I. R. ECKART,

*Assistant Secretary.*

*Report of the Honourable Attorney General Mowat, approved by His Honour the Lieutenant-Governor of Ontario in Council on the 3rd October, 1875.*

The undersigned has had under consideration the report of the late Minister of Justice to his Excellency the Governor General, approved of by his Excellency in Council, and communicated to his Honour the Lieutenant-Governor by a despatch from the Under Secretary of State, bearing date 5th April, 1875, the subject being certain sections of four of the statutes passed at the third session of the second Parliament of Ontario.

The undersigned begs to submit the following observations upon this report:—

1. Objection is made to part of the twenty-seventh section of chapter 5 of 37 Victoria, "The Ballot Act of 1874." This section provides that "no person shall," amongst other things, "forge or counterfeit, or fraudulently alter, deface or fraudulently destroy, any ballot paper, or the name or initials of the deputy returning officer signed thereon;" and that "any person guilty of any violation of this section shall be liable, if he be a returning officer, to imprisonment for any term not exceeding two years, with or without hard labour, and if he be any other person, to imprisonment for any term not exceeding six months, with or without hard labour." The report suggests that it is not within the competence of the provinces to legislate on the subject of forgery, and that the clauses quoted will be in conflict with the Dominion Act 32 and 33 Vic., chap. 19, or some sections thereof.

It is probably the forty-fifth section of the Dominion Act, with which the Ontario enactment is supposed to be in conflict. That section is as follows:—"Whosoever maliciously, and for any purpose of fraud or deceit, forges any document or thing written, printed or otherwise made capable of being read, or utters any such forged document or thing, knowing the same to be forged, is guilty of felony, and shall be liable to be imprisoned in the penitentiary for life, or for a term not less than two years, or to be imprisoned in any other jail or place of confinement for any term less

than two years, with or without hard labour, and with or without solitary confinement ; and the wilful alteration, for any purpose of fraud or deceit, of any such document or thing, or of any document or thing, the forging of which is made penal by this Act, shall be held to be a forging thereof." Reading this section in connection with the rest of the Act, it does not appear certain that the section will be held by the courts to apply to ballot papers, which are the creation of a subsequent provincial statute, and until that question is placed beyond doubt by judicial decision, it is expedient that the provincial legislature should take care that in no event such an act of wrong doing should escape liability to punishment, and the punishment provided by the Ontario Act is less than that provided by the Dominion Act. Experience has shown that it is impossible for either a provincial legislature or the Dominion Parliament, in the public interest, to abstain from legislation on matters the jurisdiction as to which may be open to more or less of question, as the Dominion statute books, as well as the statute books of the provinces, from the time of confederation, amply illustrate.

The criminal law is among the subjects of exclusive jurisdiction by the Dominion Parliament. But the Ballot Act is (with the exception of the clause in question) admitted to have been within the jurisdiction of the Ontario legislature to pass ; and a provincial legislature has, by "The British North America Act 1867," express power to provide for imposition or punishment by fine, penalty or imprisonment, for enforcing the law of the province, in relation to any matter coming within the jurisdiction of the legislature. The Dominion Parliament may have authority to give additional force to provincial enactments, by making the violation of a provincial law a criminal offence, and such a jurisdiction was assumed when it was enacted (31 Vic., chap. 71, sec. 3, Dominion), that "any wilful contravention of any Act of the legislature of any of the provinces within Canada, which is not made an offence of some other kind, shall be a misdemeanour, and punishable accordingly." If the Dominion enactment first quoted (32 and 33 Vic., chap. 19, sec. 45) applies to the forgery of ballot papers, the penalties imposed by the Dominion and provincial statutes may in strict construction, be regarded as cumulative, rather than conflicting, or at worst, the provincial enactment is void.

2 The next objection to our legislation relates to parts of two sections of the "Act to make further provision for the due administration of justice" (chap. 7), by which the new appeal judges thereby provided as required to be "selected from the judges, for the time being, of the Courts of Queen's Bench, Chancery and Common Pleas, or from such barristers as are eligible to be appointed judges of those courts ;" and by which the precedence which the judges of the Appeal Court shall have is laid down. The first of these enactments is said to be *ultra vires*, because the ninety-sixth and ninety-seventh sections of "The British North America Act 1867," impose no such restriction on the authority of the Governor General to appoint the provincial judges. It may be observed that, though we have assumed that the Appeal Court judges are to be paid and appointed by the Dominion Government, the judges expressly mentioned in the ninety-sixth section are the judges of "the Superior, District and County Courts" only, and the Court of Error and Appeal is not a "District" or "County" Court ; nor is it one of the courts which, by our law, was at the time of the passing of "The British North America Act," called "Superior Courts," that expression being defined by the Consolidated Statutes (Canada), Chap. 2, sec. 8, as meaning the Courts of Queen's Bench, Chancery and Common Pleas. Apart from this consideration, it is to be noticed that the qualifications of the judges of these courts had been already been provided for by Chap. 10 sec. 7, Chap. 12, sec. 4 ; and that at the date of "The British North America Act 1867," the Court of Error and Appeal consisted of the existing judges of these three courts, and any retired judge of any of them. The Ontario statute, in authorizing the additional judges to be appointed to the Court of Appeal, put an end to the necessity of such new judges being judges or retired judges, of the Superior Courts, and provided that the selections of other than judges, should be of barristers "eligible to be appointed judges of those courts." The judgeships being new, their qualifications had to be defined ; and the legislative jurisdiction to define them was surely that which had the power and responsibility belonging to "the administration of justice," and



"the constitution of the courts." The Ontario legislature was not prepared to authorize the creation of the new judgeships unless the qualification of the new judges should be required by law to be those, already enacted of other judges, and it was for the Dominion Government to consider whether they would accept the provincial Act with the provision, or would take the responsibility of disallowing the Act, because these qualifications were demanded. If the legislature had been attempting to impose new restrictions on the appointment of judges, provided for by legislation, before "The British North America Act, 1867," the case would have been open to observations inapplicable to the statute now in question.

As to providing by provincial legislation for the precedence of the judges among themselves, the undersigned apprehends that such a provision is part of the "constitution of the courts," as to which the provincial legislatures have express jurisdiction, and is as clearly within the authority of the provinces, as is the regulation of the precedence of the bar (36 Vic., cap. 4, Ontario). It may be observed, also, that the precedence of the learned judges in appeal, as amongst themselves, was regulated by a statute from a very early period (see Consolidated Statutes, Upper Canada, cap. 10, sec. 6; cap. 12, sec. 4, &c.) The argument that in England all matters of precedence belong, in the absence of legislation, to Her Majesty, may be admitted; for in the present case there is legislation; and the notion that no matters of prerogative can be legislated upon by any of the confederated provinces, the undersigned submits that he has, in his report (on the Escheat Act), dated 17th February, 1875, shown to be an error. A copy of this report, annexed to a copy of a minute of Council approving thereof, was, on the 22nd day of February, 1875, transmitted to the Dominion Government.

The next objection to Ontario legislation appears to be one of form merely. It relates to two sections (184 and 189) of the Consolidated School Law, cap. 28, which designate the violation of certain provisions as "misdemeanour." The violation of a provincial law having been made a misdemeanour, by the Dominion Act, 31 Vic., cap. 71, sec. 3, the undersigned, in his report of 8th December, 1873 (transmitted to the Dominion Government with a copy of a minute of council approving thereof, on the 16th January, 1874), pointed out the propriety and usefulness of adopting in provincial Acts the designation thus given by the Dominion Act, to such acts of wrong doing. But as it is Dominion legislation alone which appears to give to the violation of a provincial law the name of misdemeanour, and as, notwithstanding that legislation, the Dominion Government has a second time objected to the use of the term in our legislation, the undersigned recommends that, as a matter of courtesy, the use of the term be avoided for the future.

The last objection of the late Minister of Justice refers to certain sections of the Act respecting the sale of fermented or spirituous liquors (37 Vic., cap. 32, Ontario). But it is unnecessary to discuss this objection, inasmuch as, since the report of the late Minister of Justice was made, the Court of Error and Appeal, in the case of *Regina vs. Taylor*, has decided that the enactments complained of were within the jurisdiction of the legislature, and are valid.

O. MOWAT,  
*Attorney General.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th November, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th November, 1874.

The undersigned has the honour to report, that in the session of the legislature of the province of Ontario, held in the 37th year of Her Majesty's reign, on the 24th March, 1874, was passed an Act, chapter 8, intituled: "An Act to amend the Law respecting Escheats and Forfeitures."

The Act provides in effect that, whenever lands, &c., situate in Ontario, have (1) escheated to the Crown by reason of intestacy without lawful heirs, or have (2) become



forfeited, whether for treason or felony, or any other cause, the Attorney General may cause possession of such lands, &c., to be taken, in the name of the Crown.

It also provides that the Lieutenant-Governor in Council may grant lands which may be so escheated or become forfeited, with a view of restoration to any of the family of the person to whom it had belonged, and the same without entry or inquest of office being found.

The Act also provides that the Lieutenant-Governor in Council may make any assignment of personal property to which the Crown is entitled (1) by reason of the person last entitled thereto having died intestate, without kin or other persons entitled to succeed thereto, or (2) by reason of forfeiture of the same to the Crown; and further, that the Lieutenant-Governor may waive or release the right of the Crown in such property.

The undersigned is strongly inclined to entertain the opinion that this law is not within the competence of a local legislature, upon the following grounds, viz. :—

*First, as to Escheats.*

The law of England (except in so far as the same may have been affected in England by statute law, not applicable to Canada) prevails in the province of Ontario.

The practice prior to confederation was for the issue, under the great seal of the late province of Canada, of Her Majesty's writ to commissioners, requiring them to summon a jury to ascertain the particulars of the estate, and its escheat to the Crown, and upon inquisition held, and return thereof, the same was filed in the Court of Queen's Bench of Upper Canada (now Ontario).

The question is, whether circumstances are now varied, and whether escheat being a prerogative of the Crown, anything is to be found in "The British North America Act, 1867," by which the same is devolved upon the government of a province. Unless, therefore, any such power is, by that statute, conferred upon the Local Government, the exercise of Her Majesty's prerogative would rest with the Governor General of Canada as her representative.

The undersigned is not aware of any grounds upon which the legislature of a province can assume a right to legislate as to the prerogative right of escheat, unless it be claimed under :

(a) Section 92, subsection 13, "property and civil rights in the province," or ;

(b) Section 109, which provides that "all lands belonging to the several provinces of Canada at the date of the union are to belong to the several provinces of Ontario \* \* \* \* in which the same are situate."

As to the first point, concerning "property and civil rights" in the province, it appears to the undersigned, that so long as lands escheat to the Crown by reason of failure of issue (or from any other cause, if such there be, as distinct from forfeiture) the Legislature of a province, under the powers guaranteed to it in respect to property and civil rights by the 92nd section of "The British North America Act, 1867," cannot legislate or take any action, in derogation of the rights of Her Majesty.

No prerogative rights of the Crown are vested in the Lieutenant-Governor of a province, unless it be under "the British North America Act;" nor does his commission, issued by the Governor General under the Great Seal of Canada, confer on him the right of using or exercising any prerogative.

There would, therefore, be no authority in the Lieutenant-Governor to exercise the prerogative of the Crown in respect to escheat, nor would the Legislature have competence to deal with such right, or to confer any powers on the Lieutenant-Governor in respect thereof; nor would the Queen be bound by any Acts of a local legislature in "respect to property and civil rights" arising in regard to her Crown. If, however, they lay claim under the 109th section of "The British North America Act, 1867," the latter cannot apply, inasmuch as that section has reference alone to lands belonging to the province of Canada \* \* \* \* at the date of the union, and in such case the section would give no power to Ontario to deal with such lands as might become escheated to the Crown since the date of the Union, 1st July, 1867.

Moreover, if the 109th section of "the British North America Act, 1867," is relied upon, it must be remembered that such has reference to what are known as "Crown lands" as distinguished from (B. N. A. Act, schedule 3, sec. 9) Ordnance lands (B. N. A. Act, sec. 91, sub-sec. 24) Indian lands, and that the Act could not, if it applied to any lands, apply to the two latter classes.

*Second, as to Forfeitures.*

The Act of Ontario provides (1) that whenever any lands have become forfeited, whether for treason or felony, or for any other cause, the Attorney General may cause possession to be taken in the name of the Crown, &c., and that the Lieutenant-Governor in Council may make any grant of forfeited lands, or any assignment of personal property to which the Crown is entitled (1) by reason of the person last entitled thereto having died intestate and without leaving any kin, or (2) by reason of the same having become forfeited to the Crown.

The forfeiture of lands or personal property for treason or felony (or for other cause than forfeiture for want of heirs) is also a matter of prerogative right of the Crown, the power of granting the same after the forfeiture has accrued to the Crown has not, by the British North America Act, been conferred upon a province or its Lieutenant-Governor, and it must still, therefore, continue to be administered by the Governor General of Canada as Her Majesty's representative.

The Act of Ontario tends to confer power on the Lieutenant-Governor in Council to restore lands or personal property, forfeited for crime, to the family of the person to whom the same had belonged. This is in effect giving the power to exercise an attribute of pardon in the prerogative of mercy.

Moreover, forfeiture is to be regarded as a matter of criminal law and criminal procedure—subjects which, by section 91 of "The British North America Act, 1867," subsection 27, are within the exclusive legislative jurisdiction of the Parliament of Canada.

It should also be mentioned that the subject of forfeiture by corruption of blood has been already partially dealt with by the Act of Canada of 1869, 32 and 33 Vic., Chap. 29, sections 55 and 56. These sections provide that, except for certain offences, the attainer shall not disinherit the heir; but only the right of the offender during his natural life.

The Act of Ontario will be found to be in conflict with this provision of the Act of Canada.

In either view, therefore, whether, as affecting Her Majesty's prerogative, or as entrenching upon the criminal law or criminal procedure, the undersigned is of opinion that the legislature of a province has no power to legislate in respect to forfeiture to the Crown, of land or personal property.

But the statute deals also with forfeiture of personal property, by reason of want of kin or other person entitled to succeed thereto.

The views expressed above, in reference to escheats, are, in a great measure applicable to this point.

The undersigned is equally of opinion that, under the head of "property and civil rights," no provincial legislature can exercise authority, in respect to the right of the Crown, to the personal property of an intestate, leaving no persons capable of inheriting.

The undersigned recommends that communication should be had with the Lieutenant-Governor of Ontario to the above effect, suggesting that the Act in question is beyond the legislative competence of the legislature of Ontario, and that the same should therefore be repealed.

H. BERNARD,

*Deputy Minister of Justice.*

I concur.

T. FOURNIER,  
*Minister of Justice.*



*Lieutenant-Governor Crawford to the Secretary of State of Canada.*

GOVERNMENT HOUSE, TORONTO, 22nd February, 1875.

SIR,—With further reference to your despatch of the 28th November last, respecting the disallowance of the Act passed by the Ontario legislature, in reference to “escheats and forfeitures,” I have now the honour to transmit, for the consideration of his Excellency the Governor General in Council, copy of an order in council, approved of by me on the 22nd of February, 1875, together with copy of report on the subject, by the Honourable the Attorney General of this province.

I have, etc.,

JOHN CRAWFORD.

*Lieutenant Governor.**Report of the Honourable Attorney General Mowat, approved by His Honor the Lieutenant Governor in Council, on the 22nd day of February, 1875.*

The undersigned has had under consideration the report of the Deputy Minister of Justice, dated 18th November, 1874, with reference to the act to amend the law respecting escheats and forfeitures, passed 24th March, 1874, which report was concurred in by the Minister of Justice and approved by an order of the Privy Council, dated 27th November.

Copies of these papers having been received here during the late session of the Ontario legislature, it was impossible for the undersigned to give to them immediate attention.

The undersigned trusts that after the Minister of Justice has had an opportunity of reading and considering what the undersigned has now to submit, in support of the act of the Ontario legislature, he will not hesitate to withdraw the concurrence which, in the absence of any statement of the provincial view, he was led to express in the forcibly stated, but *ex parte* opinion and recommendation, of his deputy. The undersigned ventures to affirm (notwithstanding the arguments of the Deputy Minister of Justice to the contrary) that the act in question was not *ultra vires*, but was entirely within the authority of the legislature to pass, and that, if this is not clear, the proper course will appear to be, confirmatory legislation on the part of the Dominion Parliament, and not the disallowance of the act, or its enforced repeal.

The matter is not likely to be very important to the Dominion or provincial exchequer, but is important for the principle on which the recommendation of the report is based. Property escheated or forfeited in the Dominion for crime, is too small for any contention about it, even if the custom were for such property to be applied to public uses; and property escheated for want of heirs or next of kin has also amounted, hitherto, to very little. The undersigned is aware of but one estate of any considerable amount which is supposed to have escheated for want of heirs; and this estate is now in litigation in chancery, and is confidently claimed by several persons as being the legal heirs of the deceased. But when escheats and forfeitures occur, it has not been usual for the Crown in England, or this country, to take advantage of them for the benefit of the crown, or the public. The course, according to British usage, is stated in the books to be, that, upon a memorial being presented, “the Crown will often make a grant of escheated property to persons having moral claims upon the intestate; as, for instance, illegitimate children to whom the property has been given by an invalid will,” etc., etc.; “and in the same manner, it is stated that in practice the goods of felons are rarely, if ever, seized to the Crown’s use.” That, where “a grant must be procured in order to make a title, either to the convict’s forfeited or escheated estates in land, or to his leaseholds, money in court, or in the hands of parties requiring a valid discharge for it,” the practice is for the convict’s relatives, who conceive that they are fit objects, to memorialize the treasury, setting forth the facts relating to the property, and any circumstances favourable to the application, such as the indigence and good character of the memorialists, and on such memorial the desired grant is generally made.



All this, so far as regards lands, appears to be done in England under the authority of an imperial statute, 39 and 40 George III., chap. 3, which is not in force in Canada ; and that statute was the basis on which the 4th, 6th and 7th sections of the Ontario Act were framed. In this respect our Act but brings the law of the province into harmony with what has been the law of Great Britain for three-quarters of a century.

The other sections of the Act (viz., the 1st, 2nd and 4th) have for their object the abolition of a preliminary process, which had its origin in a state of society that has happily passed away, even in England—a process which is cumbrous, expensive, and of no practical utility at the present day. These provisions were framed in order to place the crown in the same relation to escheated or forfeited property as, in analogous cases, private individuals occupy in regard to property in general,

1. With regard to the right to such property, and to the jurisdiction to legislate respecting it, it is to be remembered that, while property of this kind in the British North American province before confederation, was in the Queen's name, as all other public property was, and is, it did not belong to Her Majesty personally, and for her private use ; nor did it belong to the empire at large. On the contrary, such property, like ungranted and unappropriated wild lands, belonged to the provinces. And the provinces have still all former rights which have not been taken from them, or which they have not themselves parted with.

The Confederation Act contains no clause repealing the old constitutional acts which governed the provinces, or declaring that all unenumerated rights founded upon, or derived under the former Acts, or otherwise possessed by the provinces, were to lease, or were to vest in the Dominion ; and it is not pretended that the Act contains any provision which would give this property in the Dominion, if a provision for that purpose is necessary.

Either, therefore, escheated and forfeited property belongs still to the provinces, or the Crown at confederation resumed all provincial rights which the Confederation Act did not deal with, an alternative which is wholly unsupportable, and which the undersigned trusts that the authorities of the Dominion, as well as those of all the provinces, will at all times unite in repudiating. The undersigned assumes it to be undeniable that all rights of the provinces as they existed before confederation have, by the confederation act, been divided between the Dominion and the provinces, and that whatever has not been given to the former is retained by the latter.

The undersigned submits that these considerations (not touched upon by the report of the Deputy Minister of Justice) are absolutely conclusive on the present question, for if escheated and forfeited property belongs to the provinces, the provincial legislatures have certainly a right to deal with it, as falling under the head of "property and civil rights in the province."

2. But the express language of "The British North America Act 1867," happens to contain enough to establish the same view affirmatively from the Act itself. Lands, mines, minerals, royalties and other "public property" (an expression which, in English law, includes personal property as well as real), theretofore belonging to each province, are, by the 109th and 117th sections, declared to continue to belong to such province, will, however, being and continuing to be in Her Majesty's name, but having long before, by express recognizance or tacit argument, become to all intents and purposes the property of the provinces, to be used and administered by the provincial authorities for the use and advantage of the provinces, so that such property, in the view of the Imperial Parliament, "belonged" to the provinces before the passing of the British North America Act. Such was the right of the provinces, not only with regard to lands which had never been the subject of grant by the Crown, but to lands also, which had been sold by the Crown, but not patented ; and to lands which had once been granted, but had subsequently been surrendered for provincial use, and to lands in respect to which Her Majesty had any sort of right or interest, in trust for the provinces. The lands and other public property thus undoubtedly belonging to the provinces, amount to many thousand times more in extent and value, than all the escheated and forfeited property which will come into existence in half a century.

Now escheat is one of the few remaining incidents of the feudal tenure, and arose under the old feudal system *per defectum sanguinis* from the want of a tenant to perform the services to the Lord, of whom the land was held or *per defectum tenentis* by corruption of blood by attainder, the escheat was not to the Crown unless the Crown happened to be also the Lord of whom the land was held; and many of the lands in England were held of mesne Lords, and not of the Crown.

This right of escheat was called by the old writers a species of reversion.

All the lands in Ontario are held of the Crown, and not of a mesne lord, and the Crown retains in them (though limited by modern legislation) this right of escheat,

On ordinary principles of construction the right so retained must be taken to have been included, and was included, like a reversion after a grant heretofore made for life or years, in the general words of the 109th and 117th sections of "The British North America Act 1867." It is impossible to suppose (and nobody does, in fact, suppose) that the Imperial Parliament meant to except such a right from the operation of these sections, and what Parliament must be taken to have meant, is the test of what any enactment legally signifies.

The doctrine of the report would deprive all the maritime provinces of *maritima incrementa*, and of lands become *derelict* by the sudden desertion of the sea. These belong to the Queen by her prerogative, but, under our system of confederation, the trust would surely be for the provinces, and not for the Dominion; and if the trust is for the provinces, the provinces have a right to legislate and deal with such lands to the same extent, and in the same way, as they deal with other Crown lands which belong to the provinces.

The undersigned agrees with the report that the Ontario Act cannot apply, nor was it designed to apply, to Indian, or to Ordinance lands. These lands were expressly reserved by "The British North America Act, 1867," to the Dominion; and while they remain ungranted, they cannot possibly be liable to escheat or forfeiture.

3. Were the considerations thus advanced less conclusive than they are, an additional argument might be drawn for the provincial claim, from the position of the provinces with reference to the administration of justice.

The Confederation Act assigns to the provincial legislatures, power to make laws in relation to the "administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts." But it has always been presumed that the provinces not only have jurisdiction to make laws in relation to the administration of justice, but that on the provinces, under confederation, is imposed the executive duty, which the provinces had before, of administering justice in the Queen's name, and of bearing the expense of such administration, and the province of Ontario, being under this obligation, it has been admitted that the fees payable to the Crown on our legal proceedings since confederation, should of right, and do, belong to the province; and that the labour of Ontario criminals who do not go to the Dominion penitentiary, should also belong to the province. Surely the occasional forfeitures which takes place for crime may, with equal reason, be construed and implied to go to the province, as incident to the administration of justice.

It is impossible to draw any appreciable line of distinction; and, if it were possible, there is no just reason or good object for drawing a distinction between the right to the Crown fees, which occur on almost every proceeding, and the profits of criminal labour, on the one hand, and the right to the Crown forfeitures on the other hand.

4. A further argument in favour of the jurisdiction, is to be drawn from the express authority of provincial legislatures to make laws in relation to all matters of merely "private nature."

5. Public convenience is obviously in favour of such property being dealt with by the province, where the question arises, and of such property being or becoming the property of the province for this purpose; and a policy recognizing that convenience would favour all the provinces equally, and contravene no interest of the Dominion. Even when such cases arise in Ontario they may be far more conveniently dealt with by



the province, than by the executive authority at Ottawa, but, where such cases occur in the more distant provinces of the Dominion, say in British Columbia, on the one side, and Prince Edward Island on the other, the convenience of provincial, instead of Dominion action in dealing with them, is too palpable for anybody to question it. Without local officers to attend to such matters, the Dominion interest in them would be a shadow, and the duty of investigating and deciding from so great a distance, the moral or legal claims of third persons, would be costly and often impracticable. It need hardly be observed that, in doubtful questions on the construction of statutes, the argument *ab inconvenienti* is a recognized canon of interpretation. *Argumentum ab inconvenienti, plurimum valet in lege*, indeed Lord Coke laid down the rule more strongly, asserting frequently that *nihil quod est inconveniens est licitum*.

If there were any technical answer to these arguments as to our right, property escheated or forfeited after confederation, would be *casus omissus*; would be a class of property not thought of when the Act was framed, and, therefore, not provided for; and, in dealing fairly and honestly with the Act, such property should, in that case, as matter of mutual agreement and just obligation, be treated by all parties as it may be presumed that the Act would have provided, had the case been present to the minds of those who settled or accepted the Act, as our constitutional charter.

The report of the Deputy Minister of Justice makes several objections to the Act in question, and the undersigned will now remark on those. One objection is that the Act is in conflict with the Dominion statute, which confines forfeiture of lands to the life of the convict. This objection seems to refer to the third section of the Ontario Act, which provides for the granting of escheated and forfeited lands; but the fact is overlooked that the third section refers to lands escheated for want of heirs, as well as to lands escheated or forfeited for crime, and does not assume, as the Deputy Minister of Justice seems to do, that the estate to be granted is necessarily a fee, or more than a life estate; but, on the contrary, provides for any interest being granted. The section must be read, *reddendo singula singulis*.

The report of the Deputy Minister of Justice objects to the provision which authorizes the Lieutenant-Governor in Council to transfer escheated or forfeited property to any one or more of the family of the person, to whom the same had belonged, the report suggesting that this provision is, in effect, giving to the Lieutenant-Governor the power to exercise an attribute of pardon, on the prerogative of mercy. The undersigned has already mentioned that the enactment corresponds with an Imperial enactment, which has for many years been in force in England, and the objection to its adoption by the Legislature of Ontario, may be answered by a reference to social consideration.

1. So far as regards the "legal" claims to which the Act refers, the right of the Crown or public in forfeited property is subject to such claims independently of the Act; and, as to the "moral" claims, to which, also, the Act refers, if the property is ours, we must have the right of dealing with it as we choose.

2. The power contained in the Act is not to give forfeited property back to the criminal, while a pardon, where it affects the property at all, restores it to the criminal, and he may thenceforward dispose of it regardless of all moral claims.

3. Another satisfactory answer may be drawn from those enactments of the Parliament of Canada before confederation, which gave to municipalities or informers, the fines and forfeitures that parliament imposed for violations of duty. As this parliamentary disposition of fines and forfeitures had often taken place, there can be nothing unreasonable in holding that other forfeitures continue since confederation to go to the provincial governments.

The argument that the Act enables the party intitled to the forfeiture to forego part of the punishment which the law has assigned to the offence, would be at least as applicable to the fines which go to municipalities or informers, as to the forfeitures which the Act in question assumes to go to the provinces; and, if the objection is good at all, it is, beyond all comparison, stronger as applied to the former than as applied to the latter.



The Deputy Minister of Justice thinks that the circumstances of the right to escheats and forfeitures being a prerogative right, affords an argument against the Ontario Act.

The undersigned disputes this notion. The recognized modern doctrine is, that all prerogative rights are trusts for the benefit of the people; and it is easy to demonstrate that, far more of what is prerogative, falls within the acknowledged authority of the provinces, than within the authority assigned to the Dominion, and that many prerogative duties and rights devolve upon the Lieutenant-Governor, not by the express terms of "The British North America Act, 1867," but from the nature of the office which he holds. Thus, grants from provincial governments continue of necessity to be made in the Queen's name; and all proceedings in the provinces for the administration of justice, which, before confederation, were in the Queen's name, continue of necessity to be in the Queen's name still.

In practice the provincial statutes also are expressed to be by Her Majesty, with the advice and consent of the Legislative Assembly; and the Lieutenant-Governor, before proroguing parliament, assents, in the Queen's name, to the bills which have been passed. If one thing more than another is matter of prerogative, it is the administration of justice. The sovereign is said, by legal and constitutional writers, to be the "fountain of justice," and to have an "inherent right" inseparable from the Crown, to distribute "justice" amongst His and Her subjects. So it is said to be the sovereign prerogative "to see to the execution of the laws;" and by the 9th section of the Confederation Act "the executive government and authority of and over Canada is declared to continue and be vested in the Queen." This plainly includes the executive government and authority of the province as well as of the Dominion; the executive authority under the Act being executed partly by the Governor General, and partly by the Lieutenant-Governors. When the British North America Act commences to set out the provisional constitutions, the first subject treated of is under the head of "executive power." The Lieutenant-Governor, or any one discharging the duty of the Lieutenant-Governor, is called in the 62nd section "the chief executive officer;" the 63rd section provides for an "Executive Council" in Ontario and Quebec, the 64th section declares that "the constitution of the executive authority in Nova Scotia and New Brunswick shall, subject to the provisions of the Act, continue as it existed at the union, until altered under the authority of the Act;" the 65th section provides that, all powers, authorities and functions which, under any Imperial or provincial Act were, at the union, "vested in, or exercisable by the respective Governors, or Lieutenant-Governors" shall, as far as the same are capable of being exercised after the union, in relation to the Governments of Ontario and Quebec, respectively, be vested in and exercised by the Lieutenant-Governors under the new system; and by the 82nd section it is directed that the Lieutenant-Governors of Ontario and Quebec shall, "from time to time, in the Queen's name, \* \* \* summon and call together the legislative assembly of the province." The Act gives no full enumeration or general statement of the duties of the Lieutenant-Governor. To a large extent his duties and authorities are left to be implied and inferred from his character as Lieutenant-Governor or "chief executive officer," and from the known constitutional rights and duties, theretofore, belonging to the office of a Lieutenant-Governor, so far as relates to the government and legislation of the provinces.

A further illustration of the same argument may be drawn from other considerations. Thus, the soil in our local roads is vested in the Queen, so also is the bed of our navigable streams and rivers. Nobody has hitherto gainsaid our right to legislate for changing our roads and disposing of those which we abandon; or for building bridges, or authorizing ferries to cross the rivers and streams of the province, though we thus deal with what are technically matters of prerogative. Military roads alone are the property of Canada (3rd schedule); and the only ferries with which the Dominion has to do are "ferries between said province and any British or foreign country or between two provinces."

So, also another prerogative of the sovereign, according to English law, is the care of the persons and property of minors, lunatics and idiots; it has not hitherto been

doubted (and the undersigned apprehends there is no reason for doubting), that provincial legislatures have their property under their control; and since confederation various provincial Acts have from time to time been passed with respect to them, which the Dominion authorities never questioned on this ground, and which our courts have recognized and acted upon as valued laws. There is nothing in the "British North America Act, 1867," devolving this prerogative upon the Governor or legislature of the province, unless it is to be found in some of those general provisions which the undersigned has already quoted.

These considerations show that there is no reason for presuming against a claim of the provinces, though the subject may be what is technically a matter of prerogative, and has not been expressly assigned to the Lieutenant-Governors.

The undersigned may add, that on coming into the office he found that the governments of the late Mr. Sanfield Macdonald and Mr. Blake had regarded escheated and forfeited property as belonging to the province, and as within provincial jurisdiction, and had acted on that view.

The Surrogate Court here, and the Court of Chancery also, have assumed the jurisdiction to be provincial, and acted accordingly.

It thus appears that the jurisdiction of a provincial legislature and executive to deal with such matters rests on the strongest grounds, and that none of the objections suggested to the Act are sustainable; and the undersigned has considerable confidence that the Minister of Justice and his deputy will, on consideration, coincide in this conclusion.

If, in view of the whole matter, the Minister of Justice is not prepared at present to yield to the argument of strict constitutional or legal right in the provinces, the undersigned cannot doubt that he will think it both expedient and just to recommend to the Dominion Parliament to pass at its present session, an Act, confirming what has been done in Ontario; and, either expressly giving escheated and forfeited property to the provinces, or distinctly recognizing by a declaratory enactment their right to such property, unless he should be content with advising non-interference by the Dominion authorities. Any such course would be in accordance with much that has been done in dealing with provincial legislation hitherto. By a report of the Minister of Justice to the Privy Council, dated 8th June, 1868, printed in the Ontario Sessional Papers (Vol. 1, No. 19), it was justly laid down to be "of importance that the course of local legislation should be interfered with as little as possible, and the power (of disallowance) exercised with great caution, and only in cases where the law and general interests of the Dominion imperatively required it."

In the same report it was recommended "that where a measure is considered only partially defective, or where objectionable as being prejudicial to the general interests of the Dominion, or as clashing with its legislation, communication should be had with the provincial government with respect to such measure, and that in such case the Act should not be disallowed, if the general interests permit such a course, until the local government has an opportunity of considering and discussing the objection taken, and the local legislature has also an opportunity of remedying the defects found to exist." The same minister, in accordance with the principles he so enunciated, declined on various grounds, recommending the disallowance of several provincial statutes containing provisions which he regarded as *ultra vires*. Sometimes recommending confirmatory legislation to be submitted to the Dominion Parliament, and sometimes leaving to the courts to decide the question of the validity, if it should ever be raised.

All which is respectfully submitted.

O. MOWAT.

17th February, 1875.



*Report from the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st April, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th March, 1875.

The undersigned has had under consideration the report of the Executive Council of the province of Ontario, upon the report of the Attorney General of that province, on the Act passed on the 24th March, 1874, respecting Escheats and Forfeitures.

The report of the Attorney General differs with the view expressed in the Order of the Privy Council of the 27th November, 1874, and affirms:—

1. That the Act in question is not *ultra vires*, but is entirely within the authority of the legislature to pass; and
2. That if this is not clear, the proper course will appear to be confirmatory legislation on the part of the Dominion Parliament, and not the disallowance of the Act, or its enforced repeal.

The undersigned quite concurs with the Attorney General that the matter is important not as affecting the exchequer, but as to the principle; and that property escheated or forfeited, whether for crime or for want of heirs, has amounted to but little, and that the Crown has, in Canada, never sought to retain the same for its own benefit or that of the public; but has given it to the parties who, but for the escheat, would have been entitled thereto.

The course of British usage in this particular, and set forth by the Attorney General in the third page of the order of the Executive Council, is that which has been strictly followed in Canada.

On all these preliminary subjects the undersigned is quite in accord with the views expressed by the Executive Council.

With reference, however, to the paragraphs which refer to the right of property and the jurisdiction to legislate respecting it, the undersigned has the honour to remark as follows:

As to the first paragraph; this suggests:

1. That all property which was in the Queen's name prior to confederation, belongs to the Provinces; and,
2. That all rights of the provinces as they existed before confederation, have by the Confederation Act been divided between the Dominion and the provinces; and that whatever has not been given to the former is retained by the latter.

As to the first point, that is settled by the 108th and 117th sections, but is apparently thereby confined to property in the Queen's name at the date of the union.

As to the second point, it is submitted that the view represented is hardly correct; but that, on the contrary, whatever right has not been given to the provinces, is vested in the Dominion. This is peculiarly observable in the 91st and 92nd sections as to legislation. The former confers powers on the Queen, by and with the advice and consent of the House of Commons, in relation to all matters not coming within the classes of subjects by that Act assigned exclusively to the legislatures of the provinces; and,

2. It gives exclusive legislative authority in certain matters by classes; and
3. Provides, in conclusion, that any matter coming within any of the classes of those subjects, shall not be deemed to come within the class of matters of a local or a private nature, assigned exclusively to provincial legislatures.

On the other hand, the legislature, which is defined to consist, as regards Ontario, of the Lieutenant-Governor and of one House, styled "the Legislative Assembly of Ontario," has exclusive legislative competency in relation to matters of which the classes are specially defined.

Therefore, as the undersigned believes, escheats to be a matter of prerogative, and not a question of "property and civil rights," there seems no reason to depart from the view expressed in the Order of the Privy Council, that no prerogative rights of the Crown are vested in the Lieutenant-Governor of a province, unless under the Confederation Act, and that, unless that Act can be found strictly to confer upon the Lieutenant



Governor, or the Legislature of a province, an express right to deal with any matter of prerogative, such power is not vested in either the one or the other authority.

It may not be out of place here on this point, to quote from the despatch of Her Majesty's Secretary of State for the Colonies, of the 7th January, 1875, to the Governor General, in reference to the sentence passed in Manitoba upon one Lepine. It is as follows :

"The Lieutenant-Governors of the provinces of the Dominion, however important, locally, their functions may be, are a part of the Colonial Administration Staff, and are more immediately responsible to the Governor General in Council. They do not hold commissions from the Crown, and neither in power nor privilege resemble these governors of colonies to whom, after special consideration of their personal fitness, the Queen, under the great seal, and her own hand and signet, delegates portions of her prerogatives, and issues her own instructions."

It is to be remembered, also, how great a difference exists in reference, not only to the legislative powers of a parliament or legislature, but the very distinct difference as to the component parts of each of those bodies.

The Parliament of Canada is defined to consist of the Queen, the Senate and the House of Commons, and the mode of legislation by the Parliament is defined to be that of the Queen, by and with the advice and consent of the Senate and House of Commons.

On the other hand, the legislature of each province has a different definition. Taking that of Ontario, for instance, it is found to consist of the Lieutenant-Governor, and of one House styled "the Legislative Assembly of Ontario."

It is true that the legislatures of the different provinces in enacting laws have used terms "Her Majesty, by and with the advice and consent of the legislative council and assembly of the province" (or in respect of Ontario, of the Legislative Assembly of Ontario alone), and it may have been thought expedient to adopt that formula ; yet, little doubt can be entertained that the same is incorrect ; that the enacting party should be, under section 92, "the legislature" of the province, and that a Lieutenant-Governor has no power to assent to any laws of a legislature in the Queen's name, inasmuch as the Queen herself has not that power, and, cannot, therefore depute it.

The only instance in which, to the knowledge of the undersigned, there is an express delegation to a Lieutenant-Governor of privileges of the Crown, is in the commission to the Governor General, the 6th section of which is thus worded : "And we do further authorize and empower you to exercise, from time to time, as you may judge necessary, all powers lawfully belonging to us, in respect of assembling or proroguing the Senate or the House of Commons of our said Dominion, and of dissolving the said House of Commons, and we do hereby give the like authority to the several Lieutenant-Governors for the time being, of the province of our said Dominion, with respect to the legislative councils, or the legislative or general assemblies of those provinces respectively."

In practice, the Lieutenant-Governor of Ontario appears to have exercised this right, in so far as assembling or dissolving the legislative assembly ; but in respect to the proroguing, the journals of that legislature show that it is done in the name of the Lieutenant-Governor.

These allusions are made as supporting the views already expressed, that the Parliament of Canada, to which the Queen is an actual party by name, and the actual enacting power, by and with the advice and consent of the two Houses of Parliament, is the only legislative power which can operate in matters not left to the provincial legislatures ; and that the Queen, not being in any way an enacting party or power, of such a legislature, Her Majesty's name is improperly used in provincial legislation, and even if so used, such user cannot justify any abandonment of prerogative or privilege which is not vested in the provincial legislature by the 92nd section.

As to the second paragraph, the undersigned repeats that sections 109 and 117 allude merely to lands and public property belonging to the province at the time of the union, and that if property escheated, whether for want of heirs, or for crime, subsequently to the date of confederation, it cannot be included as lands or property belonging to the province at the time of the union.

As to lands sold by the Crown, prior to confederation, but not patented, the fee, so to speak, still remains in the Crown for the provinces; but under the 109th section the provinces took such lands, subject to the trust of carrying out the sale whenever the purchaser complied with the terms thereof—similarly as the lands which had once been granted, but which had subsequently been surrendered for provincial use; and, also, the lands in respect to which Her Majesty had, on the 1st July, 1867, no sort of right or interest, but in trust for the provinces.

As to the third paragraph, it does not seem to controvert the point that escheat is not within the jurisdiction of the local legislature; and as to the fourth paragraph it can hardly be contended that escheat is a matter of a merely private and local nature.

The fifth paragraph remarks that public convenience is obviously in favour of such property being dealt with by the province where the question arises.

This is a question of expediency, and it is very possible that the arguments urged in the order of the executive council are entitled to weight. It cannot, however, affect in any way the question of legislative competency, which is the one question with which the undersigned proposes to deal.

Upon a reconsideration of the case, the undersigned is unable to arrive at any other conclusion than the following:—

*Firstly*,—That escheat is a matter of prerogative, which is not, by “The British North America Act, 1867,” vested in a provincial government or legislature.

*Secondly*,—That it is not one of the subjects coming within the enumeration of subjects left exclusively to provincial legislatures.

*Thirdly*,—That a provincial legislature, by its very statutable composition, has no power to deal with the prerogatives of the Crown.

*Fourthly*,—The Lieutenant-Governor has not, under the statute, or by his commission, any power to deal with prerogatives of the Crown; and not being empowered to assent, in the Queen's name, to any law of a provincial legislature, he cannot bind Her Majesty's prerogative rights.

*Fifthly*,—That the 109th and 117th sections of “The British North America Act, 1867,” refer only to lands and public property of the several provinces at the date of the union, subject to the reservations in section 108, and schedule 3.

*Sixthly*,—That escheat cannot be dealt with under section 92, subsection 5, in respect to the management and sale of the public lands belonging to the province; or subsection 13, as to property and civil rights in the province; or subsection 16, as being a matter of a merely local or private nature in the province.

*Seventhly*,—That forfeiture for want of heirs is virtually escheat, and that forfeiture for crime and corruption of blood is a matter of criminal procedure.

The report further submits that if, in view of the whole matter, it is not considered proper at present to yield to the argument of strict constitutional or legal right in the provinces, the executive council cannot doubt that it will be just to recommend to the Dominion Parliament to pass an Act confirming what has been done in Ontario; and either expressly giving escheated and forfeited property to the provinces, or distinctly recognizing by a declaratory enactment, their right to such property, or by a non-interference on the part of the Dominion authorities.

The undersigned is not prepared to say whether Parliament can confer on a provincial legislature the powers to legislate in respect to a matter of royal prerogative; or to recognize the right of a province to escheated property; nor does he feel justified in suggesting that the Act in question should be allowed to go into operation.

He, therefore, feels it incumbent to advise that the Act of the legislature of the province of Ontario, passed on the 24th of March, 1874, intituled:

“An Act to amend the law respecting Escheats and Forfeitures” be disallowed by Your Excellency in Council.

T. FOURNIER,

*Minister of Justice.*

[Proclamation disallowing the above mentioned Act, published in the Canada Gazette, on the 3rd day of April, 1875. Vol. VIII, No. 40, p. 1189.]

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st April, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th March, 1875.

The undersigned, to whom is referred the statutes of the province of Ontario, passed on the 24th March, 1874, has the honour to recommend that your Excellency do not exercise the right of disallowance of the statutes undermentioned: Chaps. 1 to 4 inclusive, chaps. 9 to 28 inclusive, chaps. 29 to 31 inclusive, chaps. 33 to 99 inclusive, and chaps. 101, 102 and 103.

H. BERNARD,

*Deputy Minister of Justice.*

I concur.

T. FOURNIER,

*Minister of Justice*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th May, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1876.

The undersigned begs to refer to the several reports of his predecessors upon the subject of the Act of the province of Ontario, passed on the 24th March, 1874, chap. 8, entitled, "An Act to amend the law respecting Escheats and Forfeitures," and to the despatches from the Lieutenant-Governor of Ontario with reference to that Act.

Differences of opinion having arisen between the two governments upon the legal questions involved in this correspondence, and the Act referred to, having been disallowed, as beyond the competence of the provincial legislature, it appears to the undersigned important that these questions should be determined, and the undersigned has reason to believe that the Government of Ontario is prepared to assent to their submission under the 52nd clause of the Supreme and Exchequer Court Act to the Supreme Court for hearing and consideration.

The undersigned accordingly recommends that the following questions be referred, under the said clause, to the Supreme Court for hearing and consideration, *i.e.* :—

1. Whether, since 1st July, 1867, any, and which of the following subjects be the property of the Crown for the province of Ontario, or that of the Crown for the Dominion of Canada,—

(a.) Lands in Ontario escheated to the Crown by reason of intestacy without lawful heirs ;

(b.) Personal property in Ontario forfeited to the Crown by reason of intestacy and want of kin, or other persons entitled to succeed ; or

(c.) Lands or personal property in Ontario forfeited to the Crown for treason or felony, or for any other cause ?

2. Whether, in case the escheat or forfeiture took place before 1st July, 1867, the same or different, and if so, what rules apply ?

3. Whether the laws relating to any, and which of those subjects, be within the competency of the legislature of Ontario ?

The undersigned recommends that a copy of this minute be transferred to the Lieutenant-Governor of Ontario with a view to the necessary preliminary arrangements for the argument.

EDWARD BLAKE,

*Minister of Justice.*



*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th October, 1876.

The undersigned begs to refer to the Order in Council of 19th May, 1876, upon the subject of escheats and forfeitures, and to the various reports upon the same subject. In the report on which that order was founded, the undersigned recommended a reference to the Supreme Court, with the consent of the province of Ontario, of certain questions, with a view of disposing of the legal point involved.

The undersigned was led to recommend this course, for the following reasons:—

1st. With reference to forfeitures for treason, or other like cause, it was, as it is, the opinion of the undersigned that such forfeitures appertain exclusively to Canada.

2nd. With reference to escheats and forfeitures of land and personal property for want of heirs and representatives, although the opinion of the undersigned was adverse to the pretensions of Canada, yet the views entertained by his predecessors on this subject, and the course of action which had been pursued by the Government, seemed to him to render it improper that he should recommend the abandonment of the position heretofore taken, without a solemn, judicial decision. The undersigned was not insensible of some inconvenience which might arise from the presentation of the question in the manner proposed, but it seemed, at that time, to be, upon the whole, the best mode of reaching a solution. Since that time, however, a judgment, which had been obtained in the Superior Court of Quebec, in favour of the rights of Canada, has been appealed, and by the unanimous judgment of the Court of Queen's Bench, appeal side, of Quebec, composed of Mr. Chief Justice Dorion, Mr. Justice Monck, Mr. Justice Ramsay, Mr. Justice Sanborn and Mr. Justice Tessier, reversed.

The undersigned refers to a copy of this judgment, which he appends to this report. It appears to the undersigned that the more correct mode of obtaining the decision of the Supreme Court would be by prosecuting an appeal from that judgment; but independent of a question which arises as to the practicability of appealing, the undersigned is disposed to attach much weight to the unanimous judgment to which he has referred, and he is of opinion that it has so altered the circumstances, as to render proper the adoption of a different course by the Government of Canada.

The undersigned has reason to believe that the Government of Ontario is prepared to assent to the plan which he is about to propose. The undersigned recommends that the Order in Council of 19th May be rescinded, and—

1. That for the future, unless there should be a judicial decision overruling that to which he has referred, the government should act upon the assumption that lands and personal property in any province, escheated or forfeited by reason of intestacy without lawful heirs or next of kin, or other persons entitled to succeed, are subjects appertaining to the province, and within its legislative competence, and that the Government of Canada should decline to interfere in such matters.

2. That for the future, as in the past, unless there should be a judicial decision establishing the contrary view, the Government of Canada should act upon the assumption that lands and personal property, forfeited to the Crown for treason, felony or other like cause, are subjects appertaining to Canada, and within its legislative competence.

3. That, in pursuance of this policy, the Government should leave to their operation provincial statutes, otherwise unobjectionable, dealing with the first of these subjects, but should disallow provincial statutes dealing with the second of them.

The undersigned recommends that a copy of the Order in Council based on this report, be transmitted to the lieutenant-governors of the several provinces, and that the various persons who have applied to the Government of Canada to act in matters arising out of the first of these subjects, should be informed that, having regard to the judicial decision referred to, the government declines to interfere.

EDWARD BLAKE,  
*Minister of Justice.*

## COURT OF QUEEN'S BENCH.

CANADA, <i>Province of Quebec,</i> District of Quebec.	}	(Appeal Side.)
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Quebec, Friday, the eight day of September, one thousand eight hundred and seventy-six.

*Present :*

The Honourable A. A. DORION, Chief Justice.

The Honourable Mr. Justice MONCK,	The Honourable Mr. Justice SANBORN,
“ “ RAMSAY,	“ “ TESSIER.

No. 67.

The Attorney General for the province of Quebec (plaintiff in the court below), appellant, and Danase Caron, of the parish of St. Patrice de la Rivière du Loup, Burgess (defendant in the court below) and the Attorney General for the Dominion of Canada (intervening party in the court below) respondent.

The court of our lady the Queen now here, having heard the appellant and respondent, by their counsel respectively, examined as well the record and proceedings had in the court below, as the reasons of appeal filed by the appellant, and the answers thereto and mature deliberation on the whole being had; considering that, by the Honourable Attorney General for the Dominion of Canada, acting in this behalf for Her Majesty the Queen, and the late Edward Fraser, whose estate is claimed by the admission of the parties to the issue raised upon the intervention filed by the Honourable Attorney General for the province of Quebec, acting also in this behalf for Her Majesty the Queen, died at Rivière du Loup, in the province of Quebec, about the second day of February, one thousand eight hundred and seventy-four, without heirs and intestate, and according to the pretensions of both parties, he left an estate which hath escheated to the Crown. And considering this is one of the sources of revenue which, as a minor prerogative of the Crown, was yielded up to the respective provinces now confederated into the Dominion of Canada, prior to the union of the provinces of Canada, Nova Scotia and New Brunswick, and that such escheat, prior to the said union, formed part of the revenues of respective provinces where they arose.

And considering that by “The British North America Act, 1867,” such revenues as were subject to the appropriation of the respective legislatures of Canada, Nova Scotia and New Brunswick, and which are revised by the several provinces since the union, in accordance with the special powers conferred upon them by that Act, belong to said provinces. And considering as having jurisdiction over the law of descents, by virtue of its jurisdiction over property and civil rights in the province under the said Act, the legislature of the province of Quebec is invested with power to appropriate this casual revenue to itself.

And considering that amongst other things, it is declared by the said British North America Act of 1867, that all royalties belonging to the several provinces of Canada, Nova Scotia and New Brunswick, at the union, shall belong to the several provinces of Ontario, Quebec, Nova Scotia and New Brunswick, in which the same are situate or arise, and that escheats, such as the one in question, are royalties.

And, considering that such estate is composed of real as well as personal property, and that all territorial crown rights and privileges possessed by the late provinces of Canada, Nova Scotia and New Brunswick, before the union thereof into the Dominion of Canada, have been at the union given to the several provinces of Ontario, Quebec, Nova Scotia and New Brunswick, and the law of escheats by reason of want of heirs is of feudal origin and cognate with the law of tenures.

And, considering that by the general tenor of the Act of Union, and the division of assets and revenues, it is manifest that a casual local revenue like the one in question, was intended to be left to the local province.

And, therefore, considering that there is error in the judgment rendered in this cause in the Superior Court at Kamouraska, on the 29th day of January, 1876, and now in Appeal, in maintaining the intervention of the Honourable the Attorney General for the Dominion of Canada, claiming said estate of the said late Edward Fraser, as belonging to the Dominion of Canada, and not the province of Quebec, doth reverse the said judgment, and proceeding to render the judgment which the court below ought to have rendered, doth maintain the appeal of the Attorney General for the province of Quebec in this cause, and doth reject the petition in intervention of said Attorney General for the Dominion of Canada.

And it is further ordered that the record be remitted to the Superior Court at Kamouraska.

F. LANGELIER.

*Mr. Assistant Secretary Eckhart to the Secretary of State of Canada.*

TORONTO, 2nd December, 1876.

SIR,—I am directed to transmit to you, herewith, a copy of an Order of his Honour the Lieutenant-Governor in Council, and of the report of the Honourable the Attorney General therein referred to, on the subject of escheats and forfeitures, and to request that the same may be laid before his Excellency the Governor General for the information of his Government.

I have, &c.,

I. R. ECKHART,  
Assistant Secretary.

*Report of the Honourable Attorney General Mowat, approved by His Honour the Lieutenant-Governor in Council on the 24th November, 1876.*

TORONTO, 18th November, 1876.

With reference to an Order of His Excellency the Governor General in Council, dated 25th October, 1876, on the subject of escheats and forfeitures, a copy whereof has been transmitted to this Government, the undersigned has the honour to report as follows :—

That the report of the Minister of Justice, upon which the said order is founded, refers to a recent decision of the Court of Queen's Bench (Appeal side) of Quebec, affirming the right of that province to escheats within Quebec, and contains, amongst others, the following recommendations :—

1. That for the future, unless there should be a judicial decision overruling that to which he has referred, the Government of Canada should act upon the assumption, that lands and personal property in any province, escheated or forfeited by reason of intestacy without lawful heirs or next of kin, or other persons entitled to succeed, are subjects appertaining to the province, and within its legislative competence; and that the Government of Canada should decline to interfere in such matters.

2. That for the future, as in the past, unless there should be a judicial decision establishing the contrary view, the Government of Canada should act upon the assumption, that lands and personal property forfeited to the Crown for treason, felony or other like cause, are subjects appertaining to Canada and within its legislative competence.

That the recommendations of the Minister of Justice were approved by the said Order in Council, and now constitute the rule by which the Government of the Dominion will be guided in dealing with escheats and forfeitures.



The undersigned has already, in former reports, fully treated of the matters in dispute between this government and the Dominion with reference to this subject, and he is of opinion that the plan of action adopted by the said order, is, upon the whole, a fair settlement of the matters in dispute, and he, therefore, recommends that, until a judicial decision be given, establishing the contrary to be the law, this Government acts upon the assumptions adopted by the said Order in Council for the guidance of the Dominion Government hereinbefore fully set out.

O. MOWAT.

*Mr. Chester Draper to the Minister of Justice re Chap. 59.*

OFFICE OF THE PORT WHITBY HARBOUR COMPANY, PORT WHITBY, 4th April, 1874.

SIR,—As intimated to you personally a few days since when at Ottawa, I beg now to call your attention to a Bill, chap. 59, "An Act to amend the Act incorporating the Port Whitby and Port Perry Railway Company," passed at the Session of the Ontario Legislature, just closed. I may mention, first, that, as you are aware, the Port Whitby Harbour Company purchased the harbour from the late Government of Canada in 1864. That by the Order in Council transferring the harbour, riparian owners have certain rights reserved to them as follows: "That any person or persons or any body or bodies corporate now or hereafter holding any land in freehold or for a term of years, bordering on the waters of the said harbour, and desirous of building any pier or wharf within limits of said harbour, which, in the opinion of the Commissioner of Public Works of the said province, will not obstruct the proper using of the said harbour, shall have the right to build such pier or wharf into the waters of the said harbour in front of such land, having first obtained the authority in writing of the said commissioner so to do." By this you will observe "bodies corporate" have such power, which I take, it would apply to a railway company. Now the point is now: the Port Whitby and Port Perry Railway Company, not being willing to avail themselves of the rights reserved to riparian owners, gave notice of intention to apply to the Local Legislature for "power to build piers, docks, warehouse, &c., within the limits of the harbour." To this proposition the harbour company of course objected—first, upon the ground that the Railway Company could only build piers into the waters of the harbour as riparian owners in the manner prescribed by the Order in Council; and secondly, that the local legislature had no jurisdiction within the limits of any of the public harbours, they, by the British North American Act, being declared to be the property of Canada. Besides this, the "trade" and "navigation" of all the great lakes, rivers, &c., come so clearly under Dominion authority, that there seemed hardly room for a doubt as to the question of jurisdiction. But as there were doubts expressed, and being anxious myself to know whether the rights of the harbour company could be interfered with by the Local Legislature, I concluded to consult some of our best lawyers in the west, whom I thought ought to be authority upon such a subject. I consequently consulted Messrs. Crooks, Kingsmill & Cattanaach, Messrs. Harrison, Osler & Moss, as likewise the Hon. Edward Blake; and I now purpose laying before you the pith of each of their replies. First, then, Messrs. Crooks, Kingsmill & Cattanaach say:

"If the company (meaning the railway company) wishes to have any other powers than the General Act and the Order in Council give, application must be made to the Dominion Parliament. This is clearly one of those matters, in which the provincial legislature has no jurisdiction.

"The Order in Council, which by statute has the force of law, also gives riparian owners for all time, the right of building piers under certain restrictions, so that no application would be necessary on their part for legislative authority. The restriction referred to is that the Railway Company must first obtain the authority in writing of the Minister of Public Works.

"CROOKS, KINGSMILL & CATTANACH."

Messrs. Harrison, Osler & Moss say :—

"It is difficult to anticipate what rights of the company are likely to be interfered with at the instance of the 'Port Whitby and Port Perry Railway Company,' unless it be to permit the Railway Company, owning land upon the shore of the harbour, to build piers into the waters of the harbour, &c.

"The Order in Council transferring the harbour to the company, as you point out in your letter of the 26th ult., makes ample provisions for the construction of wharf by persons or bodies corporate having land on the shore of the harbour, and should it be an interference with the *navigation* of the harbour, other than such as contemplated by the Order in Council transferring the harbour, I apprehend the Dominion legislature only would have jurisdiction.

"I cannot, however, think that any special privileges would be granted to the railway, or any other company at the expense of the harbour company, by either legislature, without full notice to the harbour company and full consideration of such arguments as may be addressed to the legislature by the harbour company, in opposition to any proposed legislation.

R. A. HARRISON."

On the same point the Hon. E. Blake says :—

"The inclination of my mind is, that the action of the Parliament of Canada would be necessary in order to authorize the company to do anything which would interfere with the navigation, either of the lake or harbour; whether building a pier out into 'high' or 'deep' water would do so, is not a question for a lawyer.

E. BLAKE."

These opinions, you will observe, all point to but one conclusion, viz., that the provincial governments have no jurisdiction, but not withstanding, a Bill did pass the local house here, by a majority of four (4), having for its object, giving the Port Whitby and Port Perry Railway Company power to cross the property of the harbour company with "sidings," and to build either "on" or "without the said harbor." The meaning being simply this: that the railway company may first use property of the harbour company by the mysterious word "on," and having once crossed over to the outer or eastern breakwater, they can then commence and erect piers, butting on the property of the harbour company, but really without the harbour, by virtue of the words, "or without the said harbour," and in this way it is proposed to take from the Harbour Company their vested rights. The bill I refer to, is Bill No. 83, to "amend the act incorporating the Port Whitby and Port Perry Railway Company." The objectionable clause being No. 11, or, rather, the objectionable part being embodied in that clause.

The harbour company throw themselves entirely upon the protection of the Dominion authorities, trusting that they will not allow any infringement upon their rights, as vested in them by the Order in Council which has the force of law; but that all persons, bodies, bodies corporate, etc., shall only be allowed to build piers into the waters of the harbour, under and by virtue of the reservation set out in Order in Council, by which the harbour was vested in its present owners.

I beg, therefore, to submit for your careful consideration, as to whether His Excellency the Governor General should not be advised to withhold his assent from that portion of the bill which, by implication, assumes the local legislature to have jurisdiction "on the harbour" or "without the harbour," meaning "on" Lake Ontario, outside the breakwaters, or "on" the harbour within its limits.

I have etc.,

C. DRAPER, *President Port Whitby Harbour Co.*

P.S.—If necessary, I will send down a formal petition for his Excellency, praying that the bill may be disallowed.

(Signed) C. D.



*Mr. Chester Draper to the Deputy Minister of Justice.*

OFFICE OF THE PORT WHITBY HARBOUR COMPANY, June, 1874.

SIR,—I had the honour, some little time since, of calling the attention of the Hon. the Minister of Justice and yourself, to the Bill No. 59, of the Ontario legislature, passed at its last session (1874), or rather that part of clause eleven (11) of said bill, having for its object the granting of certain power to the Port Whitby and Port Perry Railway within the limits of the harbour, by allowing them to put down one or more sidings "on" or "in the harbour," as stated in my former letter, to which I again call your attention. I am advised that it is beyond the competence of the local legislatures to interfere with public harbours, they belong, by the British North America Act, under the jurisdiction of the Parliament of Canada; and if this be so, the bill in question should not receive the assent of his Excellency the Governor General.

The Order in Council transferring the harbour, as you are aware, gives ample powers to riparian owners whether corporations or individuals (see clause nine), for building piers into the waters of the harbour. And as this order has the force of law the harbour company contend that the railway company can only enter the harbour under the condition laid down, and to which they do not object. But that the local legislatures cannot give any power to the railway company, whereby the general powers of the railway act can be made to apply to the land, covered by the waters of the harbour.

Will you kindly give this matter your grave consideration, as it is one deeply affecting the harbour company.

I have, etc.,

C. DRAPER,

*President Port Whitby Harbour Co.*

*Report of the Honourable the Minister of Justice on Chap. 59, approved by His Excellency the Governor General in Council on the 1st of April, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th March, 1875.

The undersigned has the honour to report that an Act was passed by the legislature of Ontario, in the 37th Victoria, chap. 59, and intituled: "An Act to amend the Act incorporating the Port Whitby and Port Perry Railway Company."

Mr. Chester Draper, president of the Port Whitby Harbour Company, prays that this Act be disallowed, on the ground that it intrenches on rights vested in the harbour company, and also that the Act is calculated to interfere with navigation.

The railway company was incorporated by the legislature of Ontario, in 1868, and power was given for the construction of a railway from such point within the limits of the town of Whitby, on the shore of Lake Ontario, or within the limits of the public harbour known as the Port Whitby Harbour, and now the property of the Port Whitby Harbour Company, as to the directors of the company may appear expedient.

There are various Acts amending this Act of 1868, but not affecting the present question, and the section referred to by the report of the harbour company is the 11th of the present Act, which provides that the company shall have full power to extend their railway from some point at or near the town of Whitby, \* \* \* "and also to build one or more sidings from some point or points in or near to the town of Whitby to some point or points in or near the Whitby Harbour, or without the said harbour, so far as this legislature has jurisdiction to grant such authority and right, but subject to the rights of the Crown and to the terms and conditions set out and contained in Order in Council of the late province of Canada having reference to said harbour,"—and the section continues by giving the powers of the Railway Acts, and by the Railway Special Act, to every extension and siding, &c., but "subject to the rights of the Crown and the Order aforesaid."



The Order in Council to which reference is made in the Act is that of 1864, under which the harbour was transferred to the Port Whitby Harbour Company, and contains a provision to the effect "that any person or persons, or any body or bodies corporate, now or hereafter holding any land in freehold, or for a term of years, bordering on the waters of the said harbour, and desirous of building any pier or wharf within the limits of the said harbour which, in the opinion of the Commissioner of Public Works of the said province, will not obstruct the proper using of the said harbour, shall have the right to build such pier or wharf into the waters of the said harbour, in front of such land, having first obtained the authority in writing of the said commissioner so to do."

Exception is taken by Mr. Draper, on behalf of the Port Whitby Harbour Company, to the power given to the railway to build sidings "on or near the Whitby Harbour or without the said harbour," but it will be observed that the restriction is made "so far as the legislature of Ontario has jurisdiction to grant such authority and right, but subject to the rights of the Crown and to the terms of the Order in Council."

Now, one of the provisions of the Order in Council referred to is, that no pier or wharf shall be built, which, in the opinion of the Commissioner of Public Works of the said province (that is, the now Minister of Public Works of Canada), will obstruct the proper using of the harbour.

The undersigned is of opinion that it is within the competence of the legislature of Ontario to pass the Act, and that as the rights of the Crown in respect to navigation are reserved by the Order in Council, and by the wording of the *eleventh* clause of the Act in question, your Excellency should not be advised to exercise the right of disallowance of the Act.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur.

T. FOURNIER,  
*Minister of Justice.*

## ONTARIO, 38TH VICTORIA, 1874.

### 4TH SESSION—2ND PARLIAMENT.

*Petition of Ministers of Presbytery of Glengarry to the Governor General re. Chap. 74.*

*To the Right Honourable Sir FREDERICK TEMPLE, Earl of Dufferin and Clandeboye,  
and Governor General of Canada :*

The petition of the undersigned, being a majority of the ministers of the Presbytery of Glengarry, province of Ontario, Dominion of Canada, in our own name, and on behalf of a large number of our co-labourers and adherents in this province,

HUMBLY SHEWETH :—

1. That your petitioners do respectfully call your attention to Act number seventy-five (75) of the Acts passed in the last session of the second Parliament of the province of Ontario, Dominion of Canada, an Act designated, "An Act respecting the Union of certain Presbyterian Churches therein named," and we humbly submit that the said Act or Acts were passed in such haste as to preclude due notice of its provisions being given to many of Her Majesty's subjects, who are seriously and vitally affected by the same; and its provisions being in excess of that of any private bill, as it affects others than the applicants for said Act.

2. We submit that a great religious change has been made in the doctrine of the Presbyterian Church of Canada, in connection with the Church of Scotland, by said Act, and that the ancient standards of the Church, that have the most solemn position in its creed and practice, as well as in the union compact of Her Majesty's Kingdom of Great Britain, have been violated and changed, which matters of creed and doctrine have been repeatedly sustained as the one, or one of the distinctive features of said church.

3. We humbly state, that the Act complained of affects a large portion of Her Majesty's subjects, and is wholly without precedent in any other part of Her Majesty's Dominion, wherein said Presbyterian Church, in connection with the Church of Scotland, had a legal recognition and existence; as in the case of former unions of Presbyterian Churches in any part of this Dominion, these churches were wholly clerical erections, brought into existence by earnest, zealous ministers, whose labours were aided by the sympathy and support of such as joined themselves to them; and such congregations, or societies, could not complain of any change made upon the name, doctrine or discipline of such societies, so called into being, and so altered by such clerical guides, in each case, having, as was judged upon every separate change, good and convincing reasons for such ecclesiastical changes; but we and our people stand wholly different in the matter now complained of in and under said Act, as the people who adhere to the Presbyterian Church of Canada in connection with the Church of Scotland, are not followers of, or collected by such as would be leaders in the same, but are joined to it as to the national creed of the land many of our people left; and others were joined to its sacred truths, but, in all cases, separate and distinct from the pastor.

And the pastors amongst said people in religious matters, were not chosen for their gifts, but for the name and creed under which they appeared amongst the people who continued, amid many trials, sometimes years being without a pastor of their own beloved Church; and who do pray to be still allowed to continue said name and church.

4. We also submit, that said Act limits the toleration laws of the whole empire to our hurt, and to that of many as may deem it their solemn duty to continue faithful to vows and obligations freely and solemnly undertaken, as it prevents us and said adherents from continuing in our former peaceful ways, in which we have been accustomed to exercise our religious privileges and ecclesiastical functions, under our most valued name ; whilst it permits those who seek our religious destruction to use any name they please.

5. We also submit that the rights of the Queen of these lands, and of such of her Presbyterian subjects in connection with the Church of Scotland, as a body, and as individuals, in so far as they did not personally, or by others duly authorized, seek the change, and that such rights as formerly they each held, are not now fully maintained, as they should be, notwithstanding any provisions of said Act.

6. We submit that said Act affects properties of comparatively great value to parties in so poor and humble a position in earthly matters as we do occupy, who have devoted ourselves to the preaching of religious truths, and such our position has been taken advantage of, as we could not afford to retain counsel, to hire parties and make long journeys for united counsel in this important matter ; and to mitigate this wordly poverty, the Imperial Parliament, in its liberality, had made provision for our aid, and individuals in their liberality, have added to the same, while the Parliament of Ontario has given nothing, and yet has legislated us out of the Royal gifts of former Kings, as well as the gifts of individual friends, which individual gifts are not yet twenty years in existence ; nor has any attempt been made to show that such funds are misappropriated.

7. We also submit, that the Presbyterian Church of Canada, in connection with the Church of Scotland, although disestablished, by and with the consent of the Imperial Parliament, has not been wholly *disendowed* ; but large concessions in lands and other benefits have been still left with said church, and such lands and buildings are inalienably connected with the Church of Scotland, as the deeds thereof do more fully show ; and that the Christian denomination who now seek the same did most religiously spurn to take any favours from said Imperial legislation ; and if now any change of sentiment marks their history, and makes them to repent of their former action, the efforts to possess the rights already assigned were better directed and employed, in seeking from the wealthy Parliament of Ontario, or from the Imperial Parliament, such redistribution as their liberality might see meet to grant.

8. We also submit that the ecclesiastical court or courts, said to have given a legal consent to said Act, were not in their nature and object competent to the same, as they have no jurisdiction except in matters spiritual, and are not recognized by any portion of the people of any land, acquainted with Presbyterian order, in any other matter ; and the Act complained of, being wholly earthly and material, was beyond the power of such spiritual court, which the promoters of said Act well knew, and that without the material power, such Act joined to the spiritual domain all the power to prosecute or wrong your petitioners, or others, would be futile. Besides, so ill-adapted is said church court for any representative purpose of a wordly nature, that the largest number who appeared, and did constitute said court, are not interested therein, nor beneficiaries, nor suffers under any such Act in the smallest matters, but are engaged in the many duties of their separate callings in the Dominion, to whom any such change may be little more than a sentiment ; and that you may the better understand the same, we assure you that such parties, whom we call elders, voted four separate times in this matter ; once in the public or ordinary meeting ; 2nd, in church court, we call the session ; 3rd, in another such court, we call the presbytery ; and 4th, in the court called the synod, and also, that many such at a former time voted themselves in connection with the church called the Presbyterian Church of British North America, and now vote away anew the rights of your petitioners.

9. We submit, that, whilst we do not expect that the doctrinal differences we know to exist, may be understood by us to have directed their inquiries to other fields of thought, nor do we deem any living being a judge between us, founded, as such doctrines are, on the Holy Word of God, yet we feel these matters keenly, and complain that such Act prevents us from continuing, as we believe, in that which is wisest and best for God's glory, and our spiritual good ; besides, we do most emphatically state that we have



taken no steps to limit the collective and individual liberty of such parties as are led to see it as a duty to God and their conscience, to separate from us, and even to think they do God service in striving to erase our name and position out of the whole of this Her Majesty's Dominion of Canada; but we are willing to deal with such as once were numbered with us in a spirit of justice as large as we claim, and to make the whole Christian world witness of that equity which is in our law: "Do unto others as ye would they should do unto you," and this too in any way that said dissentient brethren may deem best, only we do most respectfully claim to be allowed to exist in peace, and in our rights, under the religious toleration of Her Majesty's laws.

10. We do submit, for these and other reasons that press sorely on our spirits, pray that you may submit said Act complained of to your Minister of Justice at Ottawa, with the view that the said Act be disallowed in whole or in part, so that no one need feel oppressed by the same; and we also submit, that we shall furnish such proofs of the civil portions in Act of which we complain, and of the statements made in this our complaint, as far as your minister is competent to adjudge upon the same, leaving out the doctrinal portions, as will satisfy the Honourable the Minister of Justice of the truth of the same; and that, in view of the injustice and tyranny attempted to be exercised upon us, whether by majorities of thousands or units, for we own no spiritual or civil jurisdiction to mere numbers, nor did we ever promise or agree to be ruled by any such, there being no such dogma in all our creed. So we claim from your Excellency, as the representative of Her Most Gracious Majesty, the Queen, in this her Dominion of Canada, the protection of all our rights and privileges, as long as we are permitted to continue under Her Majesty's laws.

And in the event of your Excellency deciding not to act in this grievous wrong, nor to grant any redress, either in the partial or total disallowance of said Act of which we do most humbly complain, we pray your Excellency to forward this our petition, accompanied with said Act, to Her Majesty the Queen in Council.

And in duty bound we do humbly pray.

THOMAS MCPHERSON,  
JOHN DAVISON,  
NEIL BRODIE,

Per T. McP.

JOHN S. MACCLAN,  
Per N. BRODIE.

*Report of the Honourable Minister of Justice re Chap. 75, approved by His Excellency the Governor General in Council on the 23rd November, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd October, 1875.

With reference to cap. 75 of the statutes passed in the year 1874 by the legislature of Ontario, intituled: "An Act respecting the Union of certain Presbyterian Churches therein named," and the petition of the Reverend Thomas McPherson and others, to his Excellency the Governor General in reference to the said Act, referred to the undersigned for report; the undersigned begs respectfully to report as follows:—

The Act recites that the Canadian Presbyterian Church, the Presbyterian Church of Canada in connection with the Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces have severally agreed to unite together and form one body or denomination of Christians, and under the name of "The Presbyterian Church in Canada."

The Act does not purport to accomplish any such union, but it deals with the property "real or personal within the province of Ontario, now belonging to, or held in trust for, or to the use of any congregation in connection or communion with any of the said churches." Presumably, the various congregations whose property is to be affected, are residents of the province of Ontario, and the undersigned does not think it necessary to consider the question which might be raised under other circumstances.

The undersigned does not conceive that he is called upon to express an opinion upon the allegations of the petition as to the injustice alleged to be effected by the Act. This was a matter for the local legislature.

The 7th clause, however, appears to deal with matters beyond the competence of the legislature. After providing that Knox College and Queen's College, both institutions in Ontario, shall stand in certain relations to the new body, it provides that the corporation of the Presbyterian College of Montreal and the corporation of Morin College at Quebec, shall also stand in certain relations to the new body.

It appears to the undersigned that these portions of the sections are *ultra vires* and inoperative; but he has been informed that like provisions have been made by the local legislature of Quebec, and, under any circumstances, he could not recommend that the Act should be disallowed, by reason of this objection.

EDWARD BLAKE,  
*Minister of Justice.*

*Mr. Under Secretary Langevin to Rev. Thomas McPherson, Lancaster, Ont.*

DEPARTMENT OF THE SECRETARY OF STATE, OTTAWA, 14th December, 1875.

SIR,—I am directed to acknowledge the receipt of your letter of the 8th instant, addressed to his Excellency the Governor General, referring to a memorial submitted by yourself and others in the month of February last, praying for the disallowance of an Act of the Ontario legislature respecting the union of certain Presbyterian churches, and to inform you that the subject has received the consideration of his Excellency in Council, and that his Excellency has been pleased to direct that the Act in question be left to its operation.

I have, &c.,

E. J. LANGEVIN,  
*Under Secretary of State.*

*Rev. Thomas McPherson to His Excellency the Governor General.*

LANCASTER, 20th January, 1876.

*May it please Your Excellency:—*

I am directed by the Presbytery of Glengarry, in connection with the Church of Scotland, to acknowledge the receipt of your Excellency's letter, dated 10th December, 1875, informing us "that your Minister of Justice has been called upon to furnish a report on the prayer of the memorial," whereupon I communicated with the brethren of the presbytery near me, so as to send one or more of our number to explain to your Minister of Justice the grievances and persecutions we complain of, in accordance with the prayer of our petition.

Before this arrangement was carried out, for lack of time, I received from your Excellency's Under Secretary of State, the letter dated at Ottawa, 14th December, 1875, intimating the summarily disposing of our petition, without giving us any opportunity of being heard in the matter.

Your Excellency cannot but be aware of the strife and contention the Acts have caused in the province of Ontario amongst the Scotch Presbyterian people in resisting claims not founded on titles or deeds, but on those acts complained of, as limiting the toleration laws of the empire in this province.

In these circumstances the presbytery claim from your Excellency that these papers, petitions and Acts be allowed to remain in *statu quo* until such time as your petitioners have made some arrangement to have the prayer of the said petition duly represented before the Queen in Council.

I have, &c.,

THOMAS MCPHERSON.



*Petition from Members of Presbyterian Church to Governor General.*

*To His Excellency the Right Hon. Sir Frederick Temple, Earl of Dufferin, &c., &c., Governor General of the Dominion of Canada, &c., &c., in Council :*

The petition of the undersigned members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland,

RESPECTFULLY SHOWETH :

The established existence of the Church of Scotland in Canada was long years since affirmed by the highest judicial authority of the empire, in its final determination in favour of that church ; in other words, in favour of the clergy and members thereof, in the colony, for a participation in the clergy reserve lands, allotted by the Imperial Acts of 1774 and 1791, for the support of a Protestant clergy in Canada ; thereby, in effect, recognizing the existence of the Presbyterian Church of Canada in connection with the Church of Scotland, as being within the intent of those Acts, no other denominations of Protestant clergy, at the promulgation of those Acts, having an acknowledged legal existence beside the clergy in connection with the churches of England and Scotland, in Canada.

From the period of that determination the Presbyterian Church of Canada in connection with the Church of Scotland, in its undivided existence and *quasi* corporate capacity throughout the two Canadas, has not been controverted, but has been sustained by imperial and provincial legislation and by public Acts, in important matters affecting its material and spiritual interests.

In the interest and for the guidance of the members and clergy of the said church, co-extensive with the province of Canada generally, a church synod was formed, in 1831, in conformity with the laws and regulations of the Church of Scotland, under the name of "The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland," which has continued since in active existence and operation.

Under imperial statutes for the distribution and division of the clergy reserves, the clergy of the said Presbyterian Church of Canada in connection with the Church of Scotland, receive their portion of the proceeds of the said clergy reserves, which were secularized for the uses and purposes of their original intention, the support of the clergy of the church, and were managed by commissioners for the said church, who distributed and paid the several clergy stipends and allowances, which were afterwards, under legislative authority, commuted by the said clergy, to whom they had previously been assigned, and the commutations with their accruals and subsequent contributions for the purpose were formed into a fund, and compose the temporalities fund of the said church, under the Act of the province of Canada, 22 Vic., cap. 66, first session in 1858, intituled : "An Act to incorporate the Board for the management of the Temporalities Fund in the Presbyterian Church of Canada in connection with the Church of Scotland," which fund, in its accruals and additions are, by the said Act, applied as a trust fund, exclusively to the purposes of the said clergy and of the said Presbyterian Church of Canada in connection with the Church of Scotland, and to no other existing Presbyterian religious association.

In like manner, an annuity fund was formed by contributions of the clergy and members of the said Presbyterian Church of Canada in connection with the Church of Scotland, which was entrusted to administrators, members of that church who were incorporated under the Act of the province of Canada, 10 and 11 Vic., chap. 103, intituled : "An Act to incorporate the Ministers', Widows' and Orphans' Fund of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland," which fund, in the nature of a trust fund, is exclusively to be applicable for the purposes of the widows and orphans of the clergy of the said church in connection with the Church of Scotland, and none other.

That by the said Acts of incorporation respectively, the said corporation thereby enacted and established, were of a general nature, and co-extensive with the said pro-



vince of Canada, without distinction or reference to the then local provinces of Upper Canada and Lower Canada, now Ontario and Quebec, and vested their respective trust funds exclusively for the uses and purposes of the said Presbyterian Church of Canada in connection with the Church of Scotland, and for the exclusive benefit of the beneficiaries in the said Acts mentioned, of the said Presbyterian Church of Canada, in its connection aforesaid, to the exclusion of all separatists and seceders from the said church.

By virtue of the royal letters patent of 1841, the Presbyterian College, previously established at Kingston in then Upper Canada, now Ontario, by the Presbyterian Church of Canada in connection with the Church of Scotland, for the educational purposes of that church, was duly incorporated for the province of Canada aforesaid, under the name of Queen's College, and in continuance of its original intent and object of its establishment, in connection with the Church of Scotland, as in the said letters patent expressly declared, which said royal letters patent have since remained undisturbed.

That on the fifteenth day of June last past, divers ministers and others, heretofore members of the said Presbyterian Church of Canada in connection with the Church of Scotland, separated and seceded therefrom, and, with divers others in the provinces of Quebec and Ontario, not members of the said church, formed themselves into a voluntary religious association and union, under the name of "The Presbyterian Church in Canada"—to wit: the Dominion of Canada—the said seceders, in the said heretofore province of Canada, thereby abandoning all rights of participation in the said temporalities, and widows' and orphans' funds respectively, and in the said Queen's College above mentioned.

That the said voluntary association and union have procured from the local legislatures of Quebec and Ontario, Acts of incorporation for their said union, extending the same throughout the Dominion of Canada, as general Acts for the Dominion of Canada, with authority to appropriate the said temporalities and widows' and orphans' funds to the purposes of the said union, to wit: the said Presbyterian Church of Canada in connection with the Church of Scotland.

That three Acts of the nature complained of were passed by the legislature of Quebec during its last session, in the 38th year of Her Majesty's reign, namely, chapters 61 and 64 respectively, to amend the said Act of incorporation for the widows' and orphans' fund management, above intituled, and amendments thereto, and to amend the said Temporalities Act, and chapter 62, an Act respecting the union of certain Presbyterian churches therein named, and two Acts of a similar nature by the legislature of Ontario, at its last session, to wit: 38 Vic., chaps. 75 and 76 respectively, intituled: "An Act respecting the union of certain Presbyterian Churches therein named," and "An Act respecting Queen's College, at Kingston."

That the subject matters of the said Acts of both local legislatures respectively, are not of a merely local or private nature within the said respective provinces or either of them, and do not come within the class of subjects exclusively assigned to such provincial legislation, but are general in character for the Dominion of Canada, and affect the civil rights of persons residing in either province, extra territorial of its jurisdiction, to wit: the ministers and members of the Presbyterian Church of Canada in connection with the Church of Scotland, their said rights being general and not provincial in their nature, and indivisible in their disposition, and not susceptible of being abrogated or interfered with, by merely provincial or local legislation, and that such provincial legislation has neither been required or asked for by the said Presbyterian Church of Canada in connection with the Church of Scotland, nor by its ministers and members who have not separated or seceded therefrom.

That the said provincial Acts are obnoxious, and subject to disallowance under the provision in that respect of "The British North America Act, 1867."

Wherefore, your petitioners pray, that it may please your Excellency to disallow the hereinbefore mentioned statutes passed by the legislatures of Quebec and Ontario, respectively, purporting to unite the Presbyterian Church of Canada in connection with the Church of Scotland with certain other religious bodies, under the title of "The

Presbyterian Church in Canada," and that it may please your Excellency to declare the said Acts, and each of them, illegal and unconstitutional, and to disallow the same.

And your petitioners, as in duty bound, will ever pray.

ROBERT DOBIE, Minister,  
T. MILLER, Elder,  
CHARLES DOWNIE,  
GEORGE R. ANDERSON,

LUCY McJANET,  
MARGARET NOBLE,  
ELIZABETH MACINTYRE,  
JESSIE J. MACINTYRE, and others.

*The Governor General to the Earl of Carnarvon.*

OTTAWA, 13th March, 1876.

MY LORD,—I have the honour of transmitting herewith a memorial which I have received from the Presbytery of Glengarry in connection with the Church of Scotland, forwarding a petition addressed to your Lordship, praying that two certain Acts, chaps. 75 and 76, of the province of Ontario, passed in the 38th year of Her Majesty's reign, may not receive the royal assent.

On the receipt of these documents I caused them to be referred to the Minister of Justice, for such observations as he might think fit to make thereon for your Lordship's information, and I inclose a copy of a report of a Committee of the Privy Council expressing their concurrence in the views contained in the memorial annexed, from the Honourable Mr. Blake. I also transmit copies of the several documents to which allusion is made in the memorial addressed to your Lordship.

I have, &c.,

DUFFERIN.

*Rev. Neil Brodie to Governor General.*

*To the Right Honourable Sir Frederick Temple, Earl of Dufferin and Clandeboyne and Governor General of Canada.*

*May it please Your Excellency:—*

The Presbytery of Glengarry, in connection with the Church of Scotland, in accordance with their request that you would be good enough to allow petition, papers and decisions in matters submitted to your Excellency regarding certain acts of the legislature of the province of Ontario, passed in the 38th year of Her Majesty Queen Victoria, to remain in *statu quo*, until such time as this court had made arrangements to have the grievances complained of laid at the foot of the Throne;

I have to request your Excellency to be good enough to order your secretary to forward the same to the Right Honourable the Earl of Carnarvon, Her Majesty's Chief Secretary of State for Colonial Affairs, along with this our explanatory petition, so that the same may come in due course of business before Her Majesty's Council in London.

We have forwarded to the parties whom we expect to appear for us, the decisions of your Minister of Justice as conveyed to us, and letters received by us, so that the whole may be adjudicated on as at early a date as may be convenient.

I have, &c.,

NEIL BRODIE,  
*Minister of Lochiel, Ont., Presbytery Clerk.*



*Petition of Presbytery of Glengarry to Colonial Secretary.*

*To the Right Honourable the Earl of Carnarvon, Her Majesty's Principal Secretary of State for Colonial Affairs.*

We, the Presbytery of Glengarry, province of Ontario, Dominion of Canada, in connection with the Church of Scotland, would humbly submit the following explanatory statements to your Lordship, on the matter of the Presbytery above designated, as petitioners to his Excellency the Governor General of Canada in Council, and carried by formal appeal, with his sanction, to Her Majesty the Queen in Council.

Which explanations humbly sheweth, that by letter, dated 12th February, 1875, from the Department of State, and marked a petition from the majority of the ministers of the above designated Presbytery, was duly presented before his Excellency the Governor General of Canada in Council, by one of his principal secretaries of state for the postal department, and acknowledged, as by letter dated as above, praying for the disallowance of certain Acts passed by the legislature of Ontario, in the thirty-eighth year of Her Majesty Queen Victoria, being chapter seventy-five (75) and chapter seventy-six (76) of said Acts of the legislature, as our petition more fully shows; and as the persecutions complained of have been greatly intensified since said Acts were said to have gone into operation.

Our petition to his Excellency the Governor General in Council was detained, unattended to, at Ottawa, for some ten (10) months, as dates of letters show, and when adjudicated on by the present Minister of Justice we were not allowed to be heard in explanation thereof, as date of reference to him, and date of decision show; and yet, the time thus lost is brought forward as the reason for refusing us any redress in the premises, and the injustice thereof seems the harder, if your Lordship causes your secretary to read the original petition before you. We do feel that such action, even in colonial affairs, is at variance to all the precedents of the empire, in so dealing with any matters brought, respectfully, and constitutionally, before those representing British law and order; and that any instructions, as to being regulated by the "well understood wishes of the people," could have been carried out without overthrowing rights, titles, possessions and benefits, legally and constitutionally held by us and others, now, for many and many a year.

We do feel very sorry to trouble Her Majesty's Council with our affairs, after she had been graciously pleased to do so much for the Church in Scotland; but we are very sorely pressed in our position, and we do feel causing this trouble the more, as the Queen in Council has been called so often to repress, resist Ecclesiasticism in the province of Quebec, and now importuned by us to grant relief from the same spirit in the province of Ontario, as in both provinces the respective local governments are equally subservient to the clericalism of its dominant party, as these Bills show.

We seek relief from the afflictions we suffer under these Acts, for the following and other reasons:—

Firstly.—The Acts complained of were passed without any notice being served on congregations or on ministers, though so seriously affected by said Acts; nor was such, seemingly, demanded by the legislature from the promoters of said Bills, but passed at their request, who, though office bearers in our church, formerly, were only so in matters of faith and doctrine, and had no power of a temporal nature over us or over the brethren, and they knew well that, without the secular power, no injury could be done to us in our bodies, in our estate, or amongst our people. We do not point out any of the deviations from rules of their own making, on the part of the legislature of Ontario, although we might do so in this case, as the properties of order should be within the breasts of each, both by training as well as by nature; only we state that in less than an hour, these Acts in Toronto, which is very distant from our respective homes, passed.

Then all who had withdrawn thirty years ago, joined with other denominations, joined by some of our own people, rushed at the properties held by us as before the cry, "Moab to the spoils," and under colour of said Acts we have suffered in our estates, as



well as in our religious interests, and we claim that said Acts should be disallowed, and the spiritual power of authority or of church courts alone allowed to rule.

Secondly.—The province of Ontario, as also the other provinces, has an Act or Acts on religious worship, permitting any persons so minded to constitute themselves a religious denomination under any name they please, and when the numbers are so many as the law states, they can then continue their existence, can hold property and have acknowledged rights under that name, and can carry on the religious corporation they so originate, whilst we are excluded from said liberties, although our numbers, even now, are far in excess of the limits the said law ever contemplated or expressed, as a minimum number to be so acknowledged under the Religious Worship Acts of this province; and we claim that the colonial legislature has no power to legislate us out of existence, which said Acts do, and so ought to be disallowed, or so altered as to have all left to the freedom of choice in continuing with the Church of Scotland, or withdrawing peacefully therefrom, and the more so, as one of the sections of chapter seventy-five (75) prevents our continued existence; and prepares the way to carry over all our properties without a sale or purchase, or payment; but it does not afford us the same privilege as against the larger body, making thus a regular net out of which there is no escape. So that the toleration Acts of the empire are violated by said Acts, to our hurt, and we claim protection therefrom.

We might explain that, in party government in these provinces, the more of all the ordinary safeguards of state that are violated to please a religious denomination, the more that party gains in control over such in a land so political as this, and this right is often thus trampled under foot.

Thirdly.—By an Act of the Imperial Parliament, passed in the year 1853, Ontario lands called clergy reserves, a former gift from the crown of Great Britain for the "support of a Protestant clergy," were placed at the disposal of the legislature of Upper and Lower Canada, subject to a reservation in favour of the Churches of England and Scotland, "to whom the faith of the crown was pledged." Now these churches had left with them manse or parsonages, glebes, churches, churchyards, which were then in the peaceable possession of said churches, under the "faith of the crown," as the emoluments were, that came from the provincial treasury, until the Act of 1853, withdrawing the same. Now, without being even heard in the matter, the remaining property aforesaid is conveyed by the dictum of the legislature over to another body, contrary to all precedents of former days, and a religious body, separate from us in name, and doctrine, and practice, are put into possession of those churches and heritages.

We claim the said Acts should be disallowed, until an imperial Act were passed withdrawing the "faith of the crown" from all heritages as have remained with this church, and we feel quite satisfied to abide such legislation as imperial justice will enact.

No part or portion of property legislated on was ever given over to us by the province, but was a concession from the crown of Great Britain increased by gifts from the living and the dead, so that a church, identical in name and doctrine with the Church of Scotland, should continue, and be perpetuated in Her Majesty's provinces. Yet we are legislated out of our name and rights at the request of parties who did not own said properties, nor were givers thereto, and without such Acts we could not be molested in any way, as the deeds were absolute, and had a clause in them declaring that such lands "were inalienably connected with the Church of Scotland" in all time coming.

Fourthly.—All our churches, repaired in whole or in part, have been assisted by the parent Church of Scotland, on application from parties here, voluntarily submitting themselves to the requirements of the church, and that was placing upon the property a lien or hypotheca that said property was to remain "inalienably attached to the Church of Scotland in all times coming," and a certified copy of said deed was deposited with the department of the church, called "Colonial Committee," having their rooms at No. 22 Queen Street, Edinburgh; one of the said copies will be forwarded to the 'Colonial Office,' London, in confirmation of the same; and no written notice of relief

of said lien or hypotheca was produced from the Church of Scotland to permit the legislature of Ontario to set aside said deeds duly registered ; nor were any of the deeds of the church here asked for, or looked at by the House, whilst for a few minutes the clerk called out the Bills ; nor have the lands so hypothecated a clause for redemption in equity, as said condition was to abide "in all time coming," so that the ordinary laws of trade and commerce are set aside by the legislature, to benefit other friends at the expense of the property of the church unrepresented here ; all which is wholly contrary to British law, and to our rights as British subjects of the British crown ; seeing we are resolved to remain connected with one of the churches of the empire all our days, and we claim that said connection is not a crime cognizable by any law passed as yet in these parts ; and we claim that the said Acts should be disallowed, in as far as they affect the Presbyterian Church of Canada in connection with the Church of Scotland.

In the case of Queen's College, Kingston, Ontario, chapter seventy-six (76), the Act first constituting said university was local, which Act was disallowed in order that the permanency of its connection and position would have every guarantee of continuance, as long as colonial connection would exist ; so a royal charter was granted to said college, dated at Windsor, in the fifth year of Her Majesty, Queen Victoria ; and thus royal letters patent passed the great seal, dated 16th October, 1841, granting certain privileges to said college, and also perpetual connection with the Church of Scotland, yet said royal charter or letters patent have been set aside by the legislature of Ontario, in chapter seventy-six (76), in the thirty-eighth (38) year of Her Majesty Queen Victoria, and said Acts passed that year, and the royal charter treated as no protection to the church in its control over the institution.

One of the banks doing business in this Dominion and province, is also under a royal charter, terminable at a certain time, and if not confiscated, a clear gain of over two million dollars could be made to the Dominion ; and it has no better guarantee than we had, under royal charter.

We, therefore, humbly pray inquiry may be made as to facts stated, and if found true in every respect ; as we know they must, we do pray that the Acts complained of be disallowed, notwithstanding the ten (10) months that our petition has laid in the Department of State at Ottawa. And as the law of changes in church properties begun here in the year 1855, extended itself to Ireland in the year 1870, so we feel sure that the principle now complained of, will be sure to meet some British government in its application to glebes, churches, church-yards, and other properties left with the disestablished church of Ireland before very long. And we do pray that such a decision may be come at, as will reflect lustre on the spirit of order and justice, which has marked the past of the government of Britain.

Without these Acts we do not fear any of the courts of this province to test our title before them, and our people are in all places prepared to pay all local obligations due against the properties, whether municipal or provincial, as the same may be imposed by law.

We have applied to His Excellency the Governor General of Canada to be good enough to forward, in order of business, this explanatory petition, along with the original petition, as received thereon, the 12th February, 1875, along with such other originals as have passed before him, and also the decision of the council there anent.

We have requested the colonial committee of the Church of Scotland to forward one of the duly certified deeds from the bonds of this presbytery, in their office, and we have also forwarded the papers received from Ottawa by us, to be humbly submitted to your honourable council in due form, and your petitioners, as in duty bound, shall ever pray.

Signed, in the name, and by authority of the Presbytery of Glengarry.

THOMAS McPHERSON,  
*Moderator.*

NEIL BRODIE,  
*Minister, Lochiel, Ont.,  
Presbytery Clerk.*

AT LANCASTER, ONTARIO, this 24th day of February, 1876.



*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th March, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th February, 1876.

The undersigned, to whom has been forwarded the accompanying memorial of the Presbytery of Glengarry to his Excellency, enclosing a so-called explanatory statement from the same Presbytery, addressed to the Secretary of State for the Colonies, with an expression of his Excellency's wish, that the undersigned should peruse the same and make such observations as he thinks fit, for the information of the Secretary of State for the Colonies, begs to report that the action with reference to the local statutes referred to in these papers, is the action of the Queen's Privy Council for Canada, and that it appears to him that any observation to be made on the papers for the information of the Secretary of State, should be approved in council.

The undersigned observes, that it is alleged by the presbytery that that body was not allowed to be heard, in explanation of its petition to the Governor in Council.

This statement is, so far as the undersigned is aware, entirely unfounded. The undersigned is aware of no application on the part of the presbytery to be heard. Had such an application been made, it would have been necessary for those responsible for the proper management of the matter, to have considered the propriety of granting a hearing, which if granted, would probably involve the necessity of citing those who might be opposed to the prayer of the petition, and giving them a hearing.

The undersigned is not aware of any case in which these matters have been dealt with, after the fashion suggested in their memorial by the presbytery.

The undersigned observes that it is alleged that the time said to be lost was brought forward as the reason for refusing the presbytery any redress in the premises.

This the undersigned is obliged to deny. The law accords twelve months for the disposition of the question, whether a provincial statute shall be disallowed, or left to its operation.

Within that period it was necessary for the government to act, if it should act at all, and this is all that was alleged by the government in that connection.

Passing to the objections taken to the statutes, the undersigned does not feel called upon to make any further observations, than those contained in his report to the council upon the subject of the petition and the Acts in question; but, with reference to the proposal of the presbytery, that the imperial authorities should interfere, he would observe that by "The British North America Act, 1867," the power of disallowance does not reside in the imperial authorities, that it can be exercised only within twelve months; that that time has elapsed, that there is consequently no power to interfere with the operation of the Acts in question, so far as they are within the powers of the local legislature, a question which can be raised in the courts alone.

EDWARD BLAKE,  
*Minister of Justice.*

*The Earl of Carnarvon to the Governor General.*

DOWNING STREET, 14th April, 1876.

MY LORD,—I have received your Lordship's despatch No. 70 of the 13th ultimo, forwarding a memorial from the Presbytery of Glengarry, in the province of Ontario, praying for the disallowance of certain Acts of the legislature of that province affecting the various Presbyterian churches in Canada.

I request that you will inform the memorialists that the Acts of which they complain, being Acts of the provincial legislature, their confirmation or disallowance rests, not with the imperial authorities, but with those of the Dominion of Canada, by whom they appear to have been confirmed after due consideration of the objections of the



memorialists. The Acts in question appear, therefore, to be in full operation, and no appeal against them can now be brought, unless it should appear that any of their provisions were beyond the power of the provincial legislature to pass. If the petitioners should be of opinion that such is the case, it would be open to them to try the question in a court of law.

I have, etc.,

CARNARVON.

*The Earl of Carnarvon to the Governor General.*

DOWNING STREET, 1st June, 1876.

MY LORD,—I have the honour to transmit to you a copy of a letter from the Rev. John Moffat, minister of the Scotch Church, of Bayfield, Huron County, respecting the injury done to the Scotch Church by legislation in Canada.

I have, etc.,

CARNARVON.

*The Rev. John Moffat to the Earl of Carnarvon.*

SCOTCH CHURCH, BAYFIELD, HURON COUNTY, CANADA WEST, 9th May, 1876.

MY LORD,—A great wrong has been perpetrated upon Her Majesty's loyal subjects in Canada who belong to the Church of Scotland, in consequence of the passing of certain Acts by the provincial legislatures here, to strip that church of her property, and to transfer it to a new and hostile sect, and thus destroy her completely, if possible. For a long time past we have had a tremendous struggle to preserve our rights—these were finally taken from us about a year ago, and great has been our suffering and persecution since the obnoxious Acts came into force. The cause of the movement is evidently an insane desire with the party in power here, (vulgarily called grits) to obliterate British national feelings and institutions. A considerable number of our ministers joined the movement, and with the view of first pulling down the loyal Church of Scotland, formed a sort of union with Canadians and other Presbyterians, hostile to our Church of Scotland. Against such union proceedings, we protested at every stage of them. Nevertheless the fatal Bills were rushed through the different legislatures in defiance of every right which transferred our property to a disloyal, rebellious sect! Thus was our loyal Church of Scotland robbed and plundered of property, under the deceptive name of union. Your lordship will at once see the injustice of this, the law being universally laid down, that those seceding from any body, forfeit all right to its property. Those, therefore, who thought proper to leave us and join others, had no right whatever to carry with them our property.

All the property of the Scotch Church in Canada has been raised by the laudable exertions of her own members in Scotland or in Canada, or granted partly by the British Government in recognition of her services in America, and to deprive her of such property, and transfer it to aliens, is a violation of every principle of right and justice. Every tie which connects us with the mother country should be maintained, and the Scotch Church here was a very powerful one. I have endeavoured, in the accompanying pamphlet to point out some of our sufferings and hardships, for we are now oppressed with Chancery and law suits, of which we cannot tell the issue, and our last resort is to appeal, if possible, to the Privy Council in England, for redress.

Earnestly entreating your Lordship to interest that august body in our present troubles and trials.

I have, &c.,

JOHN MOFFAT,  
Minister of the Scotch Church, Bayfield,  
Huron County, Canada West.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd November, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th November, 1875.

With reference to the five following private Acts passed in the year 1874, by the legislature of the province of Ontario, the undersigned has the honour to report as follows:—

Chapter 78, entitled: "An Act respecting the Methodist Church of Canada." By the 1st section the real or other property held in other provinces by certain church bodies belonging to those provinces is, in effect, declared to have become vested, along with property in Ontario of certain church bodies of that province, in a new church body. As to this clause the undersigned refers to his report upon chapter 75 of the same statutes, upon the reasoning of which it would appear to him that as to property outside of Ontario the clause is *ultra vires*, and inoperative; yet the undersigned does not advise that the Act should be disallowed.

Chapter 44, entitled: "An Act to enable the Corporation of the city of Kingston to close up a part of Union Street, with the water slip in front of the same, in the said city, and for other purposes."

This Act, besides making certain provisions within the competence of the local legislature, proposes to give power to close up a part of the public harbour of Kingston. It is true that all the powers given by the Act are expressed to be so far as the legislature has jurisdiction in that behalf; but the undersigned is obliged to recommend that unless the Act be amended, by eliminating the provisions to which he refers, it should be disallowed.

Chapter 67, entitled: "An Act to incorporate the Canada Fire and Marine Insurance Company."

The powers professed to be conferred by this Act appear to the undersigned too wide. It authorizes the company to effect policies of fire insurance with any persons or bodies corporate, and to make contracts of marine insurance with any persons, in respect to losses of vessels navigating any waters from or to any ports. It is not provided that the chief place of business shall be in the province. Power is given to comply with the laws of other provinces or states wherein the company may carry on business, and the word "Canada" introduced into the name is, of itself indicating of more than provincial powers. On the 31st March, 1875, chapter 82, of the Statutes of Nova Scotia for 1874, was disallowed upon grounds applicable to this Act. The undersigned recommends that unless the objectionable provisions are obviated by amendment, this Act should be disallowed.

Chapter 68, entitled: "An Act to incorporate the Industrial and Commercial Life Assurance Company of Canada."

This Act is open to the objections suggested, with reference to chapter 67, besides containing a provision with reference to the insolvency of the company.

The undersigned recommends that unless the objectionable provisions are obviated by amendment, this Act should be disallowed.

Chapter 66, entitled: "An Act to incorporate the Alliance Insurance Company."

By this Act, power is given to the company to borrow money on security of its debentures, to an amount not exceeding the amount of its paid-up capital stock. This provision seems open to serious objection, as a matter of policy; but having regard to the course which has been pursued in reference to other Acts, giving objectionable powers, the undersigned does not feel that he ought to recommend the disallowance of this Act on that ground. He may remark that by the 17th section of chapter 67 and by the 23rd section of chapter 68, powers of the same character, though not so extensive, are given to the companies by these Acts incorporated.

EDWARD BLAKE.

*Minister of Justice.*



*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd November, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th November, 1875.

With reference to the undermentioned four public Acts passed by the legislature of Ontario in the year 1874, the undersigned begs leave to report:—

Chapter 4, intituled: "An Act respecting the operation of the Statutes of Ontario."

Section 6.—The language is rather vague and is open to the construction that it applies to the statutes of the Dominion and statutes of former legislatures upon subjects within the legislative competence of the Dominion.

Section 12 enacts that several statutes should be repealed so far as they relate to Ontario—some of these statutes relating in part to criminal law and procedure are still in force, and the language with reference to their repeal is objectionably wide. It would be better to limit it to so much of the Acts, as affect matters within the legislative authority of Ontario.

Chapter 12, intituled: "An Act to amend the Act respecting Division Courts."

The provision in this Act, making it the duty of a county court judge to hold a division court in any county in the province, on being ordered to do so by the Lieutenant-Governor in Council, &c., appears to be objectionable as assuming, though to a limited extent, the power of appointment vested in the Government of Canada. It would not be objectionable to impose the duty upon requirements by order of the Governor General in Council, made upon the request of Lieutenant-Governor.

Chapter 19, intituled: "An Act respecting Apprentices and Minors."

Section 17 and 18 appear to trench upon the criminal law, most, if not all of the Acts to be dealt with by a magistrate, being criminal.

Chapter 28, intituled: "An Act to provide for voting by ballot at Municipal Elections."

Section 30 provides against the forgery, counterfeiting or fraudulently altering, defacing or destroying ballot papers, &c., and imposes a punishment for any of these offences. This section would appear to come within the objection taken by the predecessor of the undersigned in his report of the 2nd January, 1875, with reference to the Act of Prince Edward Island respecting Controverted Elections.

The undersigned recommends that the attention of the Government of Ontario be called to the Acts mentioned in this report, in order to their considering the propriety of proposing amendments before the period arrives for determining as to their disallowance.

EDWARD BLAKE.

*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 30th November, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd November, 1875.

Upon the Acts passed by the legislature of the province of Ontario at its session held in the 38th year of Her Majesty's reign, being the fourth session of the second parliament of said province, the undersigned has the honour to report that the right of disallowance ought not to be exercised in respect of the following Acts, and he therefore recommends that they be left to their operation:—

Chapters 1-3, 5-10, 13-18, 20-27, 29-43, 45-65, 68-74, 76, 77, 79-94.

EDWARD BLAKE.

*Minister of Justice.*



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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th December, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd December, 1875.

With reference to the (2) Orders in Council, dated 23rd November last, passed upon the (2) reports of the undersigned, dated 16th November, upon the following three private and four public Acts, passed at the last session of the legislature of Ontario :

*Private Acts.*

Chapter 44, intituled : " An Act to enable the Corporation of the city of Kingston to close up a part of Union Street, with the water slip in front of the same, in the said city, and for other purposes."

Chapter 67.—"An Act to incorporate the Canada Fire and Marine Insurance Company."

Chapter 68.—"An Act to incorporate the Industrial and Commercial Life Assurance Company of Canada."

*Public Acts.*

Chapter 4, intituled : "An Act respecting the operation of the Statutes of Ontario."

Chapter 12, intituled : "An Act to amend the Act respecting Division Courts."

Chapter 19, intituled : "An Act respecting Apprentices and Minors."

Chapter 28, intituled : "An Act to provide for voting by ballot at Municipal Elections."

The undersigned has the honour to report, that an Act amending the said Acts in several particulars, in respect of which objection was taken thereto in the said reports, has been this day assented to in the legislature of Ontario, with a view to obviate the disallowance of the said Acts.

The undersigned, without expressing any opinion as to whether all the amendments were necessary, considers that they are such as to render it fit that the several Acts referred to should be left to their operation, having regard, as to chapter 67, to the observation that he has been informed by the Attorney General of Ontario that he will be prepared to promote further legislation with a view to substitute some other word for the word "Canada" in the title of the company incorporated by that Act, this objection not having been remedied by the amending Act.

The undersigned, therefore, recommends that the said Acts be left to their operation, and that the Government of Ontario be requested to promote the legislation last indicated.

EDWARD BLAKE.

*Minister of Justice.*

## ONTARIO, 39TH VICTORIA, 1875-76.

### 1ST SESSION—3RD LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th October, 1876.

With reference to the statutes of the legislature of Ontario, passed in the session thereof, held in the year 1875-6 (39th Victoria), the undersigned begs to report as follows:—

Chapters 1 to 7, 10 to 22, 24 to 31, 33 to 76, 78, 80 to 91, and 97 to 114, inclusive, do not appear to call for special observation, or for the exercise of the power of disallowance.

Chapter 8.—“An Act respecting certain administrative matters herein mentioned.”

The first section of this Act is as follows:—

“The Lieutenant-Governor may, with the advice and consent of the executive council, from time to time, appoint any person or persons, jointly and severally, to be his deputy or deputies, within any part or parts of the province, in respect of matters which are within the legislative authority of the province in this behalf; and such deputy or deputies may exercise, during the pleasure of the Lieutenant-Governor, such powers, authorities and functions of the Lieutenant-Governor as, being within the legislative authority of this province, the Lieutenant-Governor deems necessary expedient to assign to such deputy or deputies; but the appointment of such deputy or deputies shall not affect the exercise by the Lieutenant-Governor of any power, authority or function.”

The sections of the British North America Act bearing upon this subject appear to be as follows:—

Section 58.—“For each province there shall be an officer, styled the Lieutenant-Governor, appointed by the Governor General in Council, by instrument, under the great seal of Canada.”

Section 59.—“A Lieutenant-Governor shall hold office during the pleasure of the Governor General; but any Lieutenant-Governor appointed after the commencement of the first session of the Parliament of Canada shall not be removable within five years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made, and shall be communicated by message to the Senate and to the House of Commons within one week thereafter, if the Parliament is then sitting, and if not, then within one week after the commencement of the next session of Parliament.”

Section 62.—“The provisions of this Act, referring to the Lieutenant-Governor, extend and apply to the Lieutenant-Governor, for the time being, of each province, or other chief executive officer or administrator, for the time being, carrying on the government of the province, by whatever title he is designated.”

Section 65.—“All powers, authorities and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the legislature of Upper Canada, Lower Canada or Canada, were or are, before or at the union, vested in or exercisable by the respective Governors or Lieutenant-Governors of those provinces, with the advice, or with the advice and consent, of the respective executive councils thereof, or in conjunction with those councils, or with any number of members thereof, or by the Governors or Lieutenant-Governors individually, shall, as far as the same are capable of being exercised after the union, in

relation to the governments of Ontario and Quebec respectively, be vested in, and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec respectively, with the advice, or with the advice and consent of, or in conjunction with the respective executive councils, or any members thereof, or by the Lieutenant-Governor, individually as the case requires, subject, nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland), to be abolished or altered by the respective legislatures of Ontario and Quebec."

Section 67.—"The Governor General in Council may, from time to time, appoint an administrator to execute the office and functions of the Lieutenant-Governor during his absence, illness, or other inability."

In connection with section 65 of "The British North America Act, 1867," it may be convenient to refer to section 40 of the Union Act, 3 and 4 Vic., chap. 35. This section preserves the prerogative to Her Majesty, notwithstanding anything contained in the Act to authorize a Governor General to appoint deputies; but the Governor of Canada does not appear to have been invested under the Act with the power to appoint a deputy. This power, might, however, be communicated to him by the direct exercise of the prerogative in each case. The 92nd section of the British North America Act gives power to the provincial legislatures to make laws in relation to the amendment, from time to time, notwithstanding anything in this Act, of the constitution of the province, except as regards the office of the Lieutenant-Governor.

Having regard to this limitation, and having regard also to the 67th section, which authorizes the Governor in Council to appoint an administrator to execute the office and functions of Lieutenant-Governor during his absence, illness or other inability, and looking to the power expressly conferred upon Her Majesty by the 14th section, to authorize the Governor General, from time to time, to appoint his own deputies, and, contrasting this extension with the more limited provisions made by the 67th section, for the case of Lieutenant-Governors, the undersigned takes it to be clear, that it would not be within the competency of the provincial legislature to empower the Lieutenant-Governor in Council to appoint a deputy for the execution of any of those offices or functions, which properly pertain to him in his capacity as Lieutenant-Governor.

The clause in question purports, however, to restrict the action of the deputy to matters which are within the legislative authority of the province in that behalf; but that restriction leaves entirely unsettled the question how far the deputy may act.

If the local legislature invests the person who, from time to time, fills the office of Lieutenant-Governor with certain powers which are not properly or necessarily attributes of his office, and with which it was competent to the legislature to invest any other person, it is obvious that the legislature which might divest the Lieutenant-Governor of these powers altogether, might give him the right to exercise them by deputy; and it is highly probable that there are transactions of a description, the performance of which, by deputy, it might be convenient to authorize; but it appears to the undersigned that it would be advisable so to alter the phraseology of the clause, as to render clearer the extent of the power, by excepting from its operation all powers and functions which are attributes of the office of Lieutenant-Governor, and limiting its operation to such powers and functions as may, from time to time, be lawfully conferred upon the person filling the office of Lieutenant-Governor by the provincial legislature.

The undersigned feels that there is much difficulty in framing a clause, and he recommends that the attention of the Lieutenant-Governor be called to these observations with a view to their consideration by his government.

Chapter 9.—"An Act respecting the Legislative Assembly."

This Act contains various clauses conferring privileges upon the assembly and its members.

The exact range of the powers of local legislatures in this particular has been the subject of discussion in more than one case.

Besides other clauses open to question, the 11th section provides that the assembly shall have all the rights and privileges of a court of record, for the purpose of summarily inquiring into and punishing, as breaches of privilege, or as contempt of court



(without prejudice to the liability of the offenders to prosecution and punishment, criminally or otherwise, according to law, independently of the Act), several acts, matters and things. Amongst them are assaults on members of the assembly, not merely during the session, but also for twenty days before and after the same ; giving false evidence before the assembly or a committee thereof ; presenting to the assembly forged or falsified documents, with an intent to deceive ; forging, falsifying or unlawfully altering papers, and certain other matters, which appear to be clearly within the criminal law. The section declares that the assembly possess the power and jurisdiction to provide by statute, as may be necessary or expedient, for inquiring into, judging and pronouncing upon the commission or doing of any such acts, matters or things, and awarding and carrying into execution the punishment thereof, provided by the Act.

The 12th section provides that any person guilty, shall be liable, in addition to any other penalty or punishment to which he is by law subject, to imprisonment for such time during the session of the Legislative Assembly then being held, as may be determined by the Legislative Assembly.

The 13th section provides, that if any person is declared to be guilty of contempt for any of the acts, matters and things in section 11 set forth, is directed to be taken into custody or to be imprisoned, the Speaker shall issue his warrant to the Serjeant-at-Arms attending the House, or to the keeper or governor of the common jail in the county of York, to take such person into custody, and to keep and detain him in custody in accordance with the order of the assembly.

The 14th section declares, that the determination of the assembly upon any proceeding under the Act, within the authority of the province, shall be final and conclusive.

It appears to the undersigned that several of these provisions are open to very serious question, as being *ultra vires* of a local legislature, but almost all of them are contained in an Act of the legislature of Quebec upon the same subject, which was left to its operation.

There are, indeed, some new provisions, but it would not be advisable, upon the principle upon which the Quebec Act was allowed, to advise the disallowance of this Act, by reason of the insertion of these provisions, and the undersigned feels bound to recommend that, following the precedent referred to, the Act should be left to its operation, it being quite possible for those who may object to its constitutionality to raise their objections in the courts.

#### Chapter 14.—“An Act respecting County Court Judges.”

The main provisions of this Act appear, by reason of the arrangements for the meeting and action of the judges concerned, not to be open to objections taken to legislation of this character, which has occurred in other provinces, and the ninth section, which imposes upon a county court judge the duty, without arrangement made between the judges, of holding courts elsewhere than in his own county, is conditional on the order of the Governor General in Council, and is, in this view, unobjectionable.

The undersigned recommends that the Act, the provisions of which appear to be highly useful, should be left to its operation.

#### Chapter 23.—“An Act respecting Insurance Companies.”

The undersigned proposes to defer for the present his report upon this Act.

#### Chapter 24.—“An Act to secure uniform conditions in Policies of Fire Insurance.”

Some question has been made as to the competency of the local legislature to pass this law, more particularly with regard to contracts made out of the province, but the undersigned recommends that the Act should be left to its operation, the question being conveniently susceptible of determination in the courts.

#### Chapter 26.—“An Act to amend the Law respecting the sale of fermented or spirituous liquors.”

Some of the provisions of this Act raise a question as to licenses which is *sub judice* ; but, as in other similar cases, the undersigned recommends that the Act should be left to its operation.

#### Chapter 32.—“An Act to make further provision respecting Permanent Building Societies.”

This Act deals with the general management of permanent building societies in the spirit of legislation, which recently took place on the subject in the Canadian Parliament.

Having regard to the doubts which exist, as to which legislature is competent to deal with this question, the undersigned cannot recommend that this Act should be disallowed.

Chapter 77.—“An Act to amend the Acts relating to the London, Huron and Bruce Railway Company.”

This Act provides (section 2) that it should be lawful for the London, Huron and Bruce Railway Company and the Great Western Railway Company to unite together as one company, or for one of the companies to purchase and acquire the property and rights of the other.

The 3rd section provides that it should be lawful for the directors of each of the companies to agree with those of the other, that the companies should be united, and that one company should purchase the property, &c., and take upon itself the liabilities &c., of the united company.

The 4th section provides that when such an agreement shall have been made, the directors of each company shall call a special general meeting of the shareholders of the company for the purpose of considering it, and that it may be ratified.

The 5th section provides that, from the time when any such ratified agreement shall take effect, the company shall become one company by the corporate name assigned in the agreement, and it provides that certain enactments in the Act to incorporate the London, Huron and Bruce Railway Company shall extend to any portion of railway which the new company shall use for the purpose of connecting the southern terminus of the London, Huron and Bruce Railway Company with the city of London.

The 6th section provides that after such ratified agreement takes effect the railway property shall become vested in the company purchasing the same, and such last mentioned company shall be responsible for all the liabilities of the company whose railway property and right shall have been transferred to them.

The 7th section provides for the capital of the union company, and gives power to the purchasing company to increase its capital, by loan, or the issue of debentures bearing any interest not exceeding seven per cent.

The 8th section continues the privileges, powers, rights and franchises proposed by either company, provided that in the case of other provisions in the charters of the two companies, the agreement between the two companies shall define which shall continue to, and be possessed by, the united or purchasing company.

All these sections, in so far as they purport to confer rights upon the Great Western Railway Company, a corporation under the legislative control of the Parliament of Canada, appear to the undersigned to be *ultra vires*. The powers required in order to make the Great Western Railway Company to act in the matter provided for by the statute, must be derived from the Parliament of Canada, and it would seem proper, in this connection, to point to the condition which is properly attached to the 14th clause, the language of which is that the Great Western Railway Company, “if so lawfully empowered,” may hold shares, etc.

The undersigned recommends that the attention of the Lieutenant-Governor be called to this Act, with a view to its amendment before the expiration of the time within which it can be disallowed.

Chapter 79.—“An Act to incorporate the Niagara Falls and Lake Erie Railway Company.”

The 33rd section enacts as follows:—

“It shall be lawful for the said company to enter into any agreement with any other Railway Company in the province of Ontario for leasing the said railroad or any part thereof, or for the use thereof at any time or times, or for any period to such other company, or for the leasing and hiring any locomotives, tenders or movable property, or for the leasing by the said company of any such other railway company’s roadway, or any part thereof, or for the use thereof at any time or times, or for any period to the said company, or for the leasing or hiring any locomotive, tenders or other movable property of such other railway company as they may deem expedient, and, generally, to make any agreement or agreements with any such other company, touching the use



by one or the other, or by both companies, of the railway or movable property of either on both, or any part thereof, or touching any service to be rendered by the one company to the other, and the compensation therefor; or such other railway company as well as any other corporation may agree upon any terms as they mutually consent to, for the loan of its credit to, or may subscribe to or become the owner of the stock of the railway company hereby created in like manner, and with like rights as individuals, but, in so far only as the powers hereby conferred may be construed to have reference to any act, deed, matter or thing to be done, executed, fulfilled or performed within the limits of the province of Ontario to the other, and the compensation therefor, and any such agreement shall be valid and binding, and shall be enforced by courts of law according to the terms and tenor thereof, and any company or individual accepting or executing such lease, shall be, and is empowered to exercise all the rights and privileges in the charter conferred: Provided, however, that any lease or agreement authorized by this section shall be subject to the approval of a majority of the shareholders obtained at a special general meeting convened, according to the by-laws of the company, for considering the same."

The 34th section is as follows:—"The said company shall have power, and it shall be lawful for them to enter into arrangements with any other railway company for the utilizing of the whole or any part of such railway company's roadway lying between the aforesaid points, as the said company may see fit, and such part so utilized shall be deemed, for the time, to be a portion of the railway so to be constructed as aforesaid, but such utilization shall not prevent said company from carrying out the original design of building an entire independent roadway."

These sections purport to authorize action by other railway companies, not limiting them to railways under the authority of the provincial legislature, and with reference to these the undersigned would refer to his remarks upon chapter 77.

Chapter 92.—"An Act to incorporate the Home Fire Insurance Company."

The 19th section provides that the Lieutenant-Governor in Council may appoint qualified persons to examine into the affairs of the company, and to cause their books to be opened for the inspection of the person or persons so appointed, and otherwise to facilitate such examinations, and to have power to examine such officers and agents under oath, and when it shall appear that the assets and financial position of the company are such as not to justify the continuance in business of the company, the Attorney General may apply in a summary manner, on motion, to one of the superior courts of law or equity, for an order requiring the said company to show cause why the business of the company should not be closed, and in case it shall appear to the satisfaction of the court, upon hearing the allegations and proofs of the respective parties, that the assets and funds of the company are not sufficient, or that the interests of the public so require, the said court shall decree a dissolution of the said company's affairs, and may appoint a receiver, and take possession of, collect and get in the assets and effects of the company, and otherwise to wind up the affairs thereof.

The 20th section gives powers to the receiver, and the 21st section to the court.

These provisions seems to trench on the law of insolvency; and the undersigned recommends that the attention of the Lieutenant-Governor be called to this objection, with a view to the amendment of the Act before the expiration of the time within which it can be disallowed.

Chapter 93.—"An Act to incorporate the Union Fire Insurance Company."

This Act in no wise limits the fire insurance business to be done by the company; a limitation, though hardly satisfactory, is made in the preceding Act. The undersigned suggests that it would be proper to amend this Act by such a limitation of the range of business as may bring the company within the powers of the local legislature.

The 16th, 17th and 18th sections contain provisions with reference to the winding up of the company similar to those contained in chapter 92, and with reference to them the undersigned repeats the recommendation already made as to that Act.

Chapter 94.—"An Act to confirm a By-law of the Canada Permanent Building and Saving Society, changing its name to the Canada Permanent Loan and Savings Company, and for other purposes therein mentioned."



Chapter 95.—“An Act to change the name of the Huron and Erie Savings and Loan Society to that of the Huron and Erie Loan and Savings Company.”

Chapter 96.—“An Act to confirm a By-law changing the name of the Western Canada Permanent Building and Savings Society to that of the Western Canada Loan and Savings Company.”

Having regard to the doubt already referred to, on the subject of the jurisdiction as to building societies, the undersigned cannot recommend the disallowance of these Acts.

EDWARD BLAKE

*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 26th March, 1877.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd March, 1877.

Upon certain Statutes of the legislature of Ontario passed in the session thereof held in the year 1875-76, (39th Victoria,) and reported upon by me on the 13th October, 1876, I have to report further, that with reference to the objections raised to chapters 77, 79, 92 and 93 of these statutes, provision has been made, as appears by the letter of the Provincial Secretary of Ontario to the Secretary of State, of the 20th March, instant, so far obviating the objections, that it is fit that these statutes should be left to their operation, and I recommend accordingly.

Upon chapter 23 of same statutes, intituled: “An Act respecting Insurance Companies,” on which I have not as yet reported, I beg to report that this act seems open to the objection which was taken to the Acts above mentioned incorporating insurance companies, but that, as appears by the despatch already referred to, this objection has been so far obviated that it is fit that the Act should be left to its operation, and I recommend accordingly.

EDWARD BLAKE,

*Minister of Justice.*

ONTARIO, 40TH VICTORIA, 1877.

2ND SESSION—3RD LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 26th October, 1877.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd October, 1877.

I beg to report upon the Acts passed by the legislature of the province of Ontario, in the 40th year of Her Majesty's reign, being the year 1877, received by the Secretary of State on the 24th day of March, 1877, as follows:—

Chapter 1.—“An Act for granting to Her Majesty certain sums of money to defray the expenses of Civil Government for the year 1877, and to provide for certain sums expended for the Public Service in the year 1875.”

Chapter 2.—“An Act to amend and repeal certain enactments of the last session of the legislature of this province.”

To these Acts there appears to be no objection, and I recommend that they be left to their operation.

Chapter 3.—“An Act to amend the Law respecting Escheats and Forfeitures.”

As the provisions of this Act appear to conform with the conclusion upon the subject of escheats and forfeitures arrived at by Council, dated 25th October, 1876, I recommend that it be left to its operation. (*See Ante page 123.*)

Chapter 4.—“An Act respecting the administration of Estates of Intestates dying without known relatives in Ontario.”

This Act provides for the obtaining, by the Attorney General of the province, of letters of administration to the estates of persons who die in the province intestate, either in whole or in part, and without leaving any known relatives, who can be readily communicated with, living elsewhere.

The third section provides that, when administration is granted to the Attorney General, the Lieutenant-Governor in Council may direct the sale of any real estate to which the intestate died entitled, and the said Attorney General shall thereupon be authorized to sell such real estate, and convey the same to the purchaser.

There appears to be nothing which limits this section to real estate situate in the province.

The powers of the local legislature would not appear to extend to authorize the sale of real estate outside of the province in such a case.

I recommend that the attention of the Lieutenant-Governor be called to these remarks.

Chapter 5.—“An Act respecting references to the Supreme Court of Canada and the Exchequer Court of Canada, in certain cases.”

There appears to be no objection to this Act, and I recommend that it be left to its operation.

Chapter 6.—“An Act respecting the Revised Statutes of Ontario.”

This Act recites that it has been found expedient to revise, classify and consolidate the Public General Statutes, which apply to the province of Ontario and are within the legislative authority of the legislature of Ontario;

That such revision, classification and consolidation have been made accordingly, and it declares that a certain printed roll marked “X” and attested as that of the said statutes so revised, classified and consolidated as aforesaid, under the signature of the

Lieutenant-Governor and clerk of the legislative assembly, and deposited in the office of the clerk of the Legislative Assembly, shall be held to be the original thereof.

The second section provides for the incorporation into the roll, of such Acts passed during the then present session, as may be thought advisable; and the fifth section provides that the Lieutenant-Governor may, by proclamation, declare the day on, from and after which the same shall come into force and have effect as law, by the designation of the Revised Statutes of Ontario; and the sixth section provides that on, from and after such day, the same shall accordingly come into force and effect.

The seventh section provides that the repeal of certain enactments mentioned in the schedule annexed to the roll shall not be construed as intended to extend to such of the provisions as relate to subjects in regard to which the Parliament of Canada has exclusive powers of legislation.

As the recital refers to the Revised Statutes as a classification and consolidation of the Public General Statutes, which apply to the province, and are within the legislative authority of the legislature of Ontario, and as the repeal of any enactments is limited as above mentioned, and as the original roll which by proclamation is to come into force, is deposited in the office of the clerk of the legislative assembly, and therefore not readily accessible, I do not think it necessary to examine critically such roll. I therefore recommend that this Act be left to its operation.

Cap. 7.—“An Act to provide for certain amendments and additions to the statutes of the province, as consolidated by the Commissioners appointed for that purpose.”

This Act appears unobjectionable, and I recommend that it be left to its operation.

Cap. 8.—“An Act to provide for certain amendments of the Law.”

Section 72 is as follows:—

“Notwithstanding anything contained in section eight of the Temperance Act of 1864, every such prohibitory by-law as therein mentioned, whether heretofore or hereafter passed, shall come into force from the first day of May next after the final passing thereof, but this provision shall not affect any question as to the validity of any by-law heretofore passed, or the time at which any by-law which may be voted on the first day of May next, shall go into effect.”

Sections 76, 77 and 78 place certain restrictions as to the issue of licenses for the sale of liquor. As mentioned in previous reports, the question as to how far the authority of the local legislature in respect of restrictions upon the sale of liquor extends, is now before the courts. I therefore merely call attention to these provisions, but recommend that the Act be left to its operation.

Chapters 9 to 13, inclusive, appear unobjectionable, and I recommend that they be left to their operation.”

Cap. 14.—“An Act respecting Aid to certain Railways and the creation of a Railway Land Subsidy Fund.”

Among other railway companies aided by this Act, is the Montreal and city of Ottawa Junction Railway Company, which, from the boundary line between Ontario and Quebec, to or near the city of Ottawa, a distance of about sixty-six miles, is to be aided at a certain rate per mile.

The eighth subsection of section 3 provides, that in order to secure the continuous running of the railways aided by this Act, the iron or steel rails laid from time to time by any of the said railways are not to be removed by the company, or by the authority of the Company, without the consent of the Lieutenant-Governor in Council, obtained on the recommendation of the Commissioner of Public Works.

This enactment appears wide enough to include the iron and steel rails which may have been laid by the Montreal and city of Ottawa Junction Railway Company on that part of the line outside of the province of Ontario, over which the local legislature has no control. It is doubtful also whether that company would be bound by the enactment just mentioned. Inasmuch, however, as a compliance with such enactment may be considered necessary to entitle the company to the aid mentioned, the Act may, I think, be left to its operation.

Cap. 15.—“An Act respecting ‘The Free Grants and Homestead Act of 1868.’”



Cap. 16.—“An Act to amend the several Acts respecting the Education Department, Public and High Schools, and University of Toronto.”

These Acts appear unobjectionable, and I recommend that they be left to their operation.

Cap. 17.—“An Act for the encouragement of Agriculture, Horticulture, Arts and Manufactures.”

Section 15, amongst other things, provides that if any person wilfully injures or destroys any property within the exhibition grounds of the Agricultural and Arts Association, or of any agricultural or horticultural society, he shall be liable to a fine, which is to be paid over to the association, or society, for its use and benefit.

This provision seems to entrench upon the criminal law respecting malicious injuries to property.

I recommend that the attention of the Lieutenant-Governor be called to this section.

Cap. 18.—“An Act to amend the Acts respecting the sale of Fermented or Spirituous Liquors.”

The remarks above made as to the power of the local legislature to deal with the subject, apply to this Act.

I beg to call attention to the use of the word “offence” in the 16th, 18th, 19th, 20th, 21st, 22nd and 23rd sections.

The objections to the use of this word in describing a violation of a provincial law were pointed out on previous occasions.

I recommend that the attention of the Lieutenant-Governor be again called to the matter.

Chapters 10 to 23 inclusive, appear unobjectionable, and I recommend that they be left to their operation.

Cap. 24.—“An Act respecting the territorial and temporary judicial districts of the province, and provisional county of Haliburton.”

The 9th and 10th sections of this Act appear to be the only ones requiring special mention, and as an important constitutional question is involved, I feel called upon to make some remarks upon them.

The 9th section repeals certain provisions of the respective Acts regarding the territorial district of Muskoka and Parry Sound and Thunder Bay, relating to the jurisdiction and powers of the stipendiary magistrate, as judge of the district or division court, and substitutes in each of such Acts the following:—

“The stipendiary magistrate shall act as division court judge of the district, and shall have the like jurisdiction and powers as are possessed by the county court judges in division courts in counties, and shall perform the like duties; and the provisions of law, from time to time, in force in Ontario, relating to division courts in counties, and the officers thereof, including the rules or forms made, or to be made by the board of county judges, and the fees payable to the clerks and bailiffs shall apply to the division courts of the said district, except where inconsistent with this Act.”

Were this the first enactment of a similar nature passed by a provincial legislature, I would hesitate long before recommending that it should be left to its operation, as it appears to entrench upon the powers conferred upon the Governor-General of Canada, by the 96th section of the British North America Act, 1867, which section is as follows:—

“The Governor General shall appoint the judges of the superior, district and county courts in each province, except those of the Court of Probate of Nova Scotia and New Brunswick.”

Inasmuch, however, as provincial legislation has been previously left to its operation, whereby certain judicial powers in civil matters have been conferred upon stipendiary magistrates, and whereby courts presided over by stipendiary magistrates, and having, in effect, the powers of the division courts of Ontario, have been constituted, I do not feel at liberty to object to the provision of the present Act, provided the jurisdiction conferred by the former legislation upon the subject which has been left to its operation, has not in effect been substantially extended.

In a report dated 29th September last, upon the Acts of last session of the legislature of British Columbia, I had occasion to remark at some length upon legislation of a nature similar to that now under consideration, and I then pointed out the danger which might ensue from this class of legislation.

I refer to that report.

The Act 31st Vic., 1868, Ontario, cap. 35, which was passed to provide for the organization of the territorial district of Muskoka, and under which the stipendiary magistrate of that district was appointed, declared that certain provisions of cap. 128 of the Consolidated Statutes of Upper Canada, intituled: "An Act respecting the administration of justice in unorganized tracts," should extend and apply to said district of Muskoka.

Similar provisions are contained in the Act 33 Vict. (1869), Ontario, cap. 24, which provides for the organization of the territorial district of Parry Sound, and in the Act 34 Vict. (1871), Ontario, cap. 4, which provides for the organization of the territorial district of Thunder Bay.

The provisions of the Act of the consolidated statutes, thus made applicable to these territorial districts, in effect provided for the holding of a court of civil jurisdiction in each district, under the name and style of the first (or other, as the case may be), division court for the district of, etc., over which the stipendiary magistrate should preside, and be the sole judge in all actions brought in such division court, and determine all questions, as well of fact as of law, in relation thereto, in a summary manner, with power, should he think fit, to summon a jury of five persons, to try the fact controverted in a case.

For every such court, provision is made for an appointment of a clerk and one or more bailiffs.

The jurisdiction of the court is declared to be over all personal actions, save certain excepted ones, where the debt or damages claimed is not more than \$100. Each court is to have a seal, with which all summonses and other processes shall be sealed or stamped.

Suits are to be commenced by summons to the defendant, issued by the clerk, containing the particulars of the plaintiff's demand.

Provision is made for the subpoenaing of witnesses. That the judgment of the court, with certain exceptions, to be final and conclusive. Provisions are made for the enforcement of the judgments by execution. Proceedings and suits against absconding debtors are provided for.

The magistrate is given jurisdiction on the consent of the parties, to try and determine cases up to \$800 in amount.

In addition to the Act in the consolidated statutes, above referred to, which has been made applicable to the three districts mentioned, certain provisions of the Act respecting Division Courts, being cap. 19 of the Consolidated Statutes of Upper Canada and of the Act to amend the Acts respecting the Division Courts, being cap. 23 of 32 Vic. (1868-9) Ontario, are made applicable to the districts of Parry Sound and Thunder Bay. The provisions of the Act respecting Division Courts referred to, relate to examination of judgment debtors, claims of landlords to goods seized in execution.

The provisions of the Act 32 Vic. (1868-69), Ontario, amending the Acts respecting Division Courts, provide that all judgments in the division courts shall have, and continue to have the same force and effect as judgments of courts of record.

Provisions are made for the entry of final judgment by the clerk when the claim is not disputed, and proceedings for the garnishment of debts are provided for. It will be thus seen that the jurisdiction of the courts presided over by the stipendiary magistrates of the three districts above mentioned, was before the passing of the Act now under consideration, practically as extensive as the jurisdiction of the various division courts in the province, and in some cases was more extensive.

The present Act does not, therefore, seem to extend, to any substantial extent, the jurisdiction previously possessed by those courts.

The section now under consideration, however, not only declares that the stipendiary magistrate as division court judge shall have the like jurisdiction and powers as are now



possessed by the county court judge in division courts in counties, but goes on to provide that the provisions of law, from time to time in force in Ontario, relating to the division courts in counties and officers thereof, etc., shall apply to the division courts of these districts. This provision is, I think, objectionable, inasmuch, although it may be quite within the powers of the legislature of Ontario to increase the jurisdiction of the division courts in counties, as such courts are now presided over by judges appointed by the Dominion, yet their jurisdiction might be increased to an extent that might be objectionable in the case of these district division courts, the judges of which are appointed by Ontario. Were the section limited in its operations to the jurisdiction and power, etc., of the county court judges in division courts and counties as now existing, I should not, for the reasons above mentioned, recommend any interference with the Act. I recommend, however, that the attention of the Lieutenant-Governor be called to the objection referred to, with a request that his government may promote, at the next session, and before the time expires for determining as to the disallowance of the Act, amendatory legislation.

Among the provisions of the Act relating to division courts, which by the section under consideration are made applicable to the courts of the districts referred to, are certain provisions which appear to be beyond the legislative authority of the local legislature, inasmuch as they seem to form part of the criminal law.

I refer to section 48, which declares that any person wrongfully holding or getting possession of accounts, money, books, etc., in the possession of the clerk, shall be guilty of a misdemeanour. To section 105, which provides for that, in case any person in any examination wilfully or corruptly gives evidence, or wilfully swears or affirms falsely, he shall be liable to the penalties of wilful and corrupt perjury. To section 181, which declares that every person who forges the seal or any process of the court or who serves or enforces any such forged process knowing the same to be forged, etc., shall be guilty of felony. To section 184, which provides that, if any officer or bailiff be assaulted while in the execution of his duty; or if any rescue be made or attempted, or any property seized, etc., the person so offending shall be liable to a certain fine.

I recommend that the attention of the Lieutenant-Governor be called to these matters

Section 10 repeals certain provisions of cap. 128 of the Consolidated Statutes of Upper Canada, intituled: "An Act respecting the administration of justice in unorganized tracts," and substitutes the following:—

The stipendiary magistrate of every temporary judicial district shall act as division court judge of the district, and shall have the like jurisdiction and powers as are possessed by county court judges in division courts in counties, and shall perform the like duties, and the provisions of law from time to time in force in Ontario, relating to division courts in counties, and the officers thereof, including the rules or forms made or to be made by the board of county judges, and the fees payable to the clerks and bailiffs, shall extend to the division courts of temporary judicial districts, except where inconsistent with this Act; provided that the provisions of law authorizing the signing of judgment by default for want of a notice disputing the plaintiff's claim, or authorizing the garnishment of debts or money demands, shall not apply to the said division courts.

The remark I have made upon section 9 applies equally to this section. I recommend that a similar course be pursued with reference to it.

By some of the sections which are so repealed, provisions are made which appear to form part of the criminal law, and, as such, are beyond the legislative authority of the local legislature. The sections I refer to are 17, which declares that certain persons unlawfully holding or getting possession of certain books, papers, etc., shall be guilty of a misdemeanour. Section 29 relating to the forging of the seal or process of the court, etc. Section 80, relating to assault of an officer or bailiff of the court while in the execution of his duty or rescuing the goods seized, etc.

I recommend that the attention of the Lieutenant-Governor be called to these matters.



Chapters 25 to 65, inclusive, appear unobjectionable, and I recommend that they be left to their operation.

Cap. 66—"An Act to incorporate the Standard Fire Insurance Company."

Although the first section incorporates this company for the purpose of carrying on the business of fire insurance and doing all things appertaining thereto, in the province of Ontario, the 18th section empowers the company to effect contracts of insurance with any person or persons against loss or damage by fire or lightning on any house, store or any building whatsoever, and in like manner on any goods, chattels, or personal estate whatsoever, and generally to do all matters and things relating to or connected with fire insurance, as aforesaid.

It may be that the limitation to the province of Ontario, contained in the first section, will extend to the general provisions of the 18th section. It cannot, however, be said to be free from doubt.

I recommend that the attention of the Lieutenant-Governor be called to this section.

Chapters 67 to 88 inclusive, appear unobjectionable, and I recommend that they be left to their operation.

I concur,

R. LAFLAMME,

*Minister of Justice.*

Z. A. LASH,

*Deputy Minister of Justice.*

*Mr. Assistant Secretary Eckart to Secretary of State.*

PROVINCIAL SECRETARY'S OFFICE, TORONTO, 7th December, 1877.

SIR,—With further reference to the correspondence that has taken place respecting the Acts passed by the legislature of this province at the recent session thereof (40 Vic., 1877), I am now directed to transmit herewith, for the information of his Excellency the Governor General, a copy of an Order in Council, approved by his Honour the Lieutenant-Governor, the 3rd instant, together with a copy of a report of the Honourable the Attorney General, dated the 26th November last, having regard to these Acts.

I have, &c.,

I. R. ECKART,

*Assistant Secretary.*

*Report of the Hon. Attorney General Mowat, approved by His Honour the Lieutenant-Governor in Council on the 3rd December, 1877.*

The undersigned respectfully reports that he has had under consideration the despatch of the Hon. the Secretary of State of Canada, dated 12th November, inclosing a copy of an order of his Excellency in Council, dated 26th October, 1877, respecting the Acts passed by the legislature of this province at the last session, and also a copy of a report of the Minister of Justice, dated 3rd October last, and on which the said order is founded.

The report suggests that the attention of your Honour should be directed to five (5) of the eighty-eight (88) Acts passed at the last session of the legislature.

With respect to three of these, namely, chapter four (4), seventeen (17) and twenty-four (24), some provisions therein are objected to, as not being confined, or not being expressly and clearly confined, to matters within the jurisdiction of the provincial legislature. The way in which the provisions referred to are dealt with in the revised statutes, appears to be free from the objections suggested in the report, and as the revised statutes repeal the Acts in which the objectionable clauses occur, and will go

into force in a few weeks, the undersigned does not think it necessary to discuss at present any of the objections referred to.

The eighteenth (18) chapter being the "Act to amend the Act respecting the sale of Fermented and Spirituous Liquors," is objected to, because of the use of the word "offence" in certain sections of the Act, and the report observes that the objections to the use of the word in describing a violation of the provincial law, had been pointed out on previous occasions.

The undersigned does not recollect that this objection has been made in any report upon the legislation of the Ontario legislature, since the report of the Minister of Justice, communicated by the Hon. the Secretary of State, in a despatch dated 9th September, 1873, inclosing a copy of the order of his Excellency in Council, dated 3rd August, 1873. The report of the undersigned, in answer, dated 8th December, 1873, and approved by the Lieutenant-Governor in Council, on the 8th January, 1874, and communicated to the Honourable the Secretary of State on the 14th of the same month, is not referred to in the report of the minister now under consideration, and the undersigned presumes that his report of the 8th December, 1873, has been overlooked, though the argument contained in it, on the point in question, was supposed to have been acquiesced in by the Dominion Government.\*

The undersigned would therefore again respectfully submit that the word "offence" is a convenient and proper term to employ in speaking of a violation of a provincial law; that it is used in that sense in Dominion legislation, as, for example, in 31 Victoria, chapter 71, section 3: that violations of the provisions of the Tavern and License Act were in the *Queen vs. Boardman*, 30 U. C. Q. B., 553, expressly held by the Court of Queen's Bench to be "offences;" that violations of even municipal laws are commonly and properly called "offences," and that beyond all doubt there are many offences which are not crimes in any recognized sense; not to speak of the somewhat limited sense which it may be argued that the expression "criminal law," has in "The British North America Act, 1867."

The fourth Act objected to is a private Act, namely, chapter sixty-six, the Act to incorporate the Standard Fire Insurance Company. The first section of this Act incorporates the company for the purpose of carrying on the business of fire insurance, and doing all things pertaining thereto in the province of Ontario; and the eighteenth section empowers the company to effect contracts of insurance, and does not therefore expressly limit these powers to the province of Ontario. But it is so manifest that by the first section, the legislature only professed to give powers of carrying on business in Ontario, that the undersigned hopes that it will not be thought necessary to disallow the Act, or to require an Act to be passed amending it.

O. MOWAT.

*Attorney General.*

November 26th, 1877.

\* For copy of Report of Hon. Attorney General Mowat, see Appendix C.

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## ONTARIO, 41ST VICTORIA, 1878.

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3RD SESSION—3RD LEGISLATURE.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 21st May, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th February, 1879.

I have the honour to report that, after a careful perusal and consideration of the Acts of the legislature of the province of Ontario, passed in the forty-first year of Her Majesty's reign (1878), I find the same free from objection. I therefore recommend that such Acts, being chapters one to seventy-five inclusive, be left to their operation.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

JAS. McDONALD,  
*Minister of Justice.*

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## ONTARIO, 42ND VICTORIA, 1879.

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4TH SESSION—3RD LEGISLATURE.

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*Mr. G. F. C. Smith to Secretary of State.*

THE LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY,

MONTREAL, 30th June, 1879.

SIR,—I have the honour to transmit herewith, for presentation to the Governor General in Council, the humble petition of The Liverpool and London and Globe Insurance Company, for the disallowance of an Act passed by the legislature of the province of Ontario at its last session (chap. 75), and known as "The City of Toronto Consolidated Debenture Act, 1879."

I have, &c.,

G. F. C. SMITH,  
*Recording Secretary.*



*Petition of "The Liverpool and London and Globe Insurance Company" to Governor General, in re-Chapter 75.*

*To His Excellency the Governor General of Canada in Council :*

The humble petition of "The Liverpool and London and Globe Insurance Company" sheweth as follows :—

1. That the corporation of the city of Toronto, some time since, put upon the London money market, sterling debentures, called waterworks debentures, to a large amount, and your petitioners, who are an English corporation, became the purchasers, and are now the holders of such debentures, to the amount of £50,000 sterling.

2. That the statutes and by-law authorizing the issue of the said debentures provided for the levy by taxation, in each year during the currency of the said debentures, of a special rate of one mill and eight-tenths of a mill in the dollar, in addition to all other rates upon all the ratable property in the city ; and for the investment of all money arising from the said rate beyond the amount required to pay the interest on the said debentures, for the purpose of creating a sinking fund exclusively for the redemption of the said debentures at maturity. That the said special rate produced on the then assessment of the city, eighty-four thousand dollars a year, leaving, after payment of the interest, thirty thousand dollars a year and interest thereon, applicable to the sinking fund, irrespective of the increase in the assessed value of the city, which has largely advanced, and will further advance, and whereby the sinking fund would be proportionately increased.

3. That it was on the basis of the security thus afforded, that your petitioners became such purchasers.

4. That your petitioners learn that at the last session of the legislature of Ontario a private Act was passed at the instance of the corporation of the city of Toronto intituled : "An Act respecting the Debenture Debt and other property of the city of Toronto," whereby, amongst other things, the accumulated sinking funds, (including that levied in respect of your petitioners' said bonds), were authorized to be diverted and applied in payment of other debts, not including your petitioners said bonds, and whereby also, instead of the sinking funds previously provided, a rate of three-quarters of one per centum on all the city debentures, was authorized to be levied, in addition to a rate for interest, and whereby the moneys arising from the substituted sinking fund rate were authorized to be applied from time to time, in redemption of any of the city debentures.

By the operation of this Act your petitioners will be deprived of their existing accumulated sinking fund, and of the adequate sinking fund rate already prescribed, and in lieu thereof a rate producing only \$6,150 a year in respect of the issue of debentures, of which your petitioners form part, will be levied, and the proceeds of this wholly inadequate rate, instead of being specially devoted to the redemption of your petitioners' bonds, may be and will be, diverted to other purposes.

5. That no notice was given of the intention to propose such legislation ; and your petitioners had no knowledge thereof, nor any opportunity to oppose the same.

6. That the said Act deprives your petitioners of the security on the faith whereby they became purchasers of the said funds, and thus operates most injuriously against your petitioners.

7. That such legislation should not have been passed, save subject to the assent of the bondholders interested.

8. That to pass such legislation without the assent, and against the will of the bondholders, is a violent interference with their just rights, a great injustice to them, and calculated to shake the confidence of English and foreign investors in all securities issued under the authority of Canadian Provincial Legislation ; since no dependence can hereafter be placed on the conditions under which a loan has been contracted remaining obligatory, longer than suits the interests or convenience of the debtor.

9. That the injustice to your petitioners and other English investors is so flagrant, and the general consequence of such legislation must be so injurious, that the Act should be disallowed.

10. Your petitioners, therefore humbly pray that the said Act may be disallowed.

HENRY STARNES, *Chairman.*

THOMAS CRAMP, *Deputy Chairman.*

A. T. GALT, *Director.*

GEORGE STEPHEN, *Director.*

G. F. C. SMITH, Recording Secretary.

MONTREAL, 30th June, 1879.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th November, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 7th November, 1879.

I have the honour to report that, at the last session of the Ontario legislature, an Act (chap. 13) was passed reducing the number of grand jurors from twenty-four to fifteen, but as the legislative authority, with respect to grand jurors in criminal matters, possessed by provincial legislatures, is doubtful, the Act contains a clause suspending its operation till brought into force by proclamation.

The Attorney General of Ontario has communicated with this department on the subject, with a view to having the question, as to the authority of the Parliament of Canada and the local legislatures respectively, in connection with grand jurors, submitted to the Supreme Court of Canada.

I recommend that this department be authorized to agree with the Ontario Government upon the questions to be submitted; the action which may be taken, to be reported to Council for further order.

JAMES McDONALD,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th March, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 12th January, 1880.

With respect to the statutes passed by the legislature of the province of Ontario, in the month of March, 1879, I have the honour to report as follows:—

The Acts, chapters 1 to 12, inclusive, do not seem to call for the exercise of the power of disallowance. I recommend that they be left to their operation.

Cap. 13.—“An Act respecting Grand Juries.”

This Act is not to come into force until a day to be named by the Lieutenant-Governor by his proclamation. It reduces the number of grand jurors required to make a panel, from twenty-four to fifteen.

The operation of the Act was suspended, owing to the doubt which exists as to the legislative authority of the provincial legislature over the constitution of the grand jury in criminal matters. It has been agreed between the governments of the Dominion and of the province, to submit the question to the Supreme Court for decision. If the Supreme Court decides against the right of the provincial legislature to pass this Act, it will doubtless be repealed; and, in the meantime, as it is not in operation, I recommend that if the Ontario Government will agree not to put it in operation, and to repeal it, if it be *ultra vires*, the power of disallowance be not exercised; otherwise, that it be disallowed, and that the Lieutenant-Governor be so informed.

Chapters 14 to 18, 20 to 30, 32 to 49, 51 to 74, 76 to 83, 85 to 95, all inclusive, do not seem to call for the exercise of the power of disallowance. I recommend that they be left to their operation.

Cap. 19.—“An Act respecting the Administration of Justice in the northerly and westerly parts of Ontario.”

This Act will be reported upon separately.

Cap. 31.—“An Act to amend the Municipal Law.”

Some of the provisions of this Act relate to the vexed question of licenses, some relating to the sale of meat, others to transient traders occupying premises in cities, towns, &c., for temporary periods, whose names are not on the assessment roll.

It may be argued that the provisions interfere with the power of the Dominion Parliament over the regulation of trade and commerce, but as the matter is by no means clear, and as any person thinking himself aggrieved, will be enabled to contest the validity of the Act before the courts, I recommend that the power of disallowance be not exercised.

Cap. 50.—“An Act respecting certain dams on Beaver Creek and other streams in the counties of Hastings and Addington.”

This Act will be reported upon separately.

Cap. 75.—“An Act respecting the Debenture Debt and certain property of the city of Toronto.”

A petition from The Liverpool, London and Globe Insurance Company, praying for the disallowance of this Act, was received, but subsequently the opposition was withdrawn. I recommend that this Act be left to its operation.

Cap. 84.—“An Act to incorporate the Prudential Life Assurance Company of Ontario.”

Doubts have been raised by the Superintendent of Insurance as to the power of a provincial legislature to incorporate a life insurance company. Questions as to the legislative control over fire insurance generally, are now before the Supreme Court for decision, in two cases brought by appeal from the Court of Appeal. It is possible that the judgment in these two cases may throw some light upon legislative authority respecting life insurance.

The inclination of my opinion is, that a provincial legislature has power to pass such an Act as the one now referred to. Similar legislation has already been left to its operation. And I recommend that the power of disallowance be not exercised with respect to this Act.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

JAS. McDONALD,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th February, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th January, 1880.

I have the honour to report that an Act was passed by the legislature of the province of Ontario at its last session, intituled :

Cap. 19.—“An Act respecting the Administration of Justice in the northerly and westerly parts of Ontario.”

This Act is apparently based upon the assumption that the conclusion come to by the Right Hon. Sir Edward Thornton, the Hon. Sir Francis Hincks, and the late Chief Justice Harrison, respecting the northerly and westerly boundaries of Ontario, settles such boundaries. I would call attention, however, to the fact that, as the Parliament of Canada have not yet legislated upon the subject, the question of the boundaries still remains, as a matter of law, unsettled. If the Parliament of Canada think proper to



pass the necessary Act declaring the boundaries to be those decided upon by the gentlemen referred to, the Act under consideration would not, in this point of view, be objectionable.

I append a memorandum (marked "A") prepared by the Deputy of the Minister of the Interior, respecting the provisional boundaries agreed upon by the governments of Canada and Ontario in the years 1874, together with a plan showing the territory included in the descriptions in sections 1, 2, 3 and 8 of the Act now under consideration.

I submit, for the consideration of Council, the question whether, pending action by the Parliament of Canada with respect to the boundaries of Ontario, this Act should be left to its operation. It was received by this Government on the 26th day of March, 1879, so that the year within which the power of disallowance must be exercised, will expire on the 25th March, 1880. Assuming that it is concluded not to disallow the Act in connection with the boundary question, there are questions arising upon it, which require serious consideration.

The 96th section of "the British North America Act, 1867," provides that the Governor General shall appoint the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick, and by the 100th section, the salaries, allowances and pensions of the judges of the supreme, district and county courts, &c., are to be fixed and provided by the Parliament of Canada.

By the 92nd section the provincial legislatures are empowered to make laws for the constitution, maintenance and organization of the provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.

Several of the provinces of Canada have, since confederation, provided for the appointment of officers called magistrates, stipendiary magistrates, commissioners, &c., and have given to those officers certain judicial functions. Till lately, their powers have been confined to matters, in which small amounts only have been in dispute, ranging from \$100 and less.

In 1877 the legislature of British Columbia passed a Bill respecting the Gold Commissioner's Court in that province. This Bill gave to the Gold Commissioner, who was a local officer, appointed by the Lieutenant-Governor, very extended jurisdiction in civil matters. It was reserved for the signification of the pleasure of his Excellency the Governor General thereon. It was not assented to. I append an extract (marked "B") from the approved report to the council from this department upon the Bill.

In 1887 an Act was passed by the province of Ontario, intituled: "An Act respecting the territorial and temporary judicial districts of the province, and the provisional county of Haliburton."

This Act gave to stipendiary magistrates referred to therein, and to the Division Court of the district of Algoma certain extended jurisdiction.

The Act was left to its operation, but not without the attention of council being called to its provisions. I append an extract (marked "C") from the approved report of this department to council respecting the same. The Act now under consideration goes a step further, and practically provides for the whole administration of civil justice for some time to come, within the territory referred to in the Act, by a court, the judge of which is appointed by the Lieutenant-Governor, and the salary and allowance of whom are fixed by the provincial legislature.

The 6th section gives to this court in the district of Algoma the following jurisdiction:—

(1.) In all personal actions where the amount claimed does not exceed four hundred dollars.

(2.) In all actions and suits relating to debt, covenant and contract, where the amount or balance claimed does not exceed eight hundred dollars. Provided always, as to the additional jurisdiction so hereby conferred, that the contract was made within Algoma, or the cause of action arose therein, or the defendant resides therein.

(3.) For the recovery of the possession of real estate in the said district.

(4.) In replevin, where the value of the goods or other property or effects distrained, taken or detained, does exceed the sum of four hundred dollars, and the goods, property or effects to be replevied, are in the said district.

Previous to the Act, its jurisdiction was confined to personal action, where the debt or damages claimed did not exceed \$100 (see Revised Statutes of Ontario, cap. 90, sec. 16), except by consent of the parties, when the stipendiary magistrate could, on their written consent, try cases to the extent of \$800.

Section 8 gives to the stipendiary magistrate holding courts in certain remote districts therein mentioned, the following jurisdiction:—

(1.) In all personal actions, where the amount claimed does not exceed one hundred dollars (except as in the next section excepted).

(2.) In all causes and suits relating to debt, contract and covenant, where the amount or balance claimed does not exceed two hundred dollars, or if the amount is ascertained by the signature of the defendant, to the sum of four hundred dollars.

Provided always, that the contract or covenant was made within the said portion of the district of Thunder Bay or Nipissing in which the court is held, or the cause of action arose therein, or the defendant resides therein.

(3.) In certain action for recovery of the possession of lands or other corporeal hereditaments situated in the said portion of the district aforesaid, in which the court is held, and the yearly value of which lands or hereditaments, or the rent payable in respect whereof does not exceed one hundred dollars, that is to say:

(a) Where the term and interest of the tenant of any such corporeal hereditament has expired, or has been determined by the landlord or the tenant, by a legal notice to quit;

(b) Where the rent of any such corporeal hereditament is sixty days in arrear, and the landlord has the right, by law, to re-enter for non-payment thereof;

And in respect to such actions the said courts shall have and exercise the same powers, as belong to, and as may be exercised by the superior courts of common law in, and in respect to actions of ejectment.

(4.) In replevin, where it is made to appear that the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of one hundred dollars, and the goods, property or effects to be replevied, are in the said portion of the district in which the court is held.

Section 10 provides for the appointment of an officer for the district of Algoma, to be called the deputy clerk for Thunder Bay, and power is given to him to issue writs for the commencement in the district of Thunder Bay, of actions in the district court.

Provision is made for a seal for the court, with which all the writs and process are to be sealed. An appeal is given from the stipendiary magistrate's order or decision, to the judge at Sault Ste. Marie.

The 14th section is as follows:—

"14. Where the amount claimed in any action in the said district court, or where, in the case of ejectment or replevin, the subject matter of the action, as appearing in the writ in ejectment, or in the affidavit filed to obtain the writ in replevin, is beyond the jurisdiction of the county courts in other parts of Ontario, costs to a successful defendant shall be taxed upon the Superior Court scale.

"(2.) In like manner, where the plaintiff recovers in respect to a cause of action beyond the jurisdiction of the said county courts, costs shall be taxed to him on the Superior Court scale, subject, however, to his obtaining the certificate or order of the judge where, under the Common Law Procedure Act, such certificate or order is required in the superior courts.

"(3.) In respect to any action within the jurisdiction of the first part of this section the attorney of a successful plaintiff shall be entitled to charge his client county court costs only, unless he was instructed in writing by such client to sue in respect to a matter beyond the jurisdiction of the said county courts, in which case the said attorney shall be entitled to charge costs upon the Superior Court scale.



"(4.) Either party may, as of right, upon giving twenty days' notice to the opposite party, have the taxation of costs by the deputy clerk, revised by the clerk at Sault Ste. Marie."

The 15th section provides for the appointment of a sheriff of the district of Thunder Bay, and for the execution by him, of writs and other process issuing out of the district court.

The 16th section empowers the stipendiary magistrate, upon the trial of any cause where the amount claimed is over \$200, or where the matters in dispute relate to the title of real estate, to state a special case for the opinion of the Court of Appeal in Ontario.

The 18th and 19th sections are as follow :—

"18. Every judgment of the said division courts may be enforced by writs or other process, framed in accordance with the requirements of the case, and similar in form to writs or other process for like purposes issued out of the Superior Courts.

"19. Every stipendiary magistrate of the district of Thunder Bay or Nipissing, may exercise the authority conferred upon county court judges by the revised statute respecting overholding tenants."

The legislature unquestionably has authority to constitute a court, possessing the jurisdiction of the courts referred to in this Act, but I submit to council whether this Act, which seems to encroach upon the powers of the Dominion Government with respect to the appointment of judges, and which goes far beyond any previous Act of a similar character, should be disallowed, notwithstanding that the other Acts, equally objectionable on principle, but less objectionable in degree, have been left to their operation. In my opinion the Act should be disallowed, unless the same be repealed within the time for disallowance.

JAMES McDONALD,  
*Minister of Justice.*

A.

DEPARTMENT OF THE INTERIOR, OTTAWA, 21st January, 1880.

*Memorandum.*

The undersigned has the honour to submit, for the information of the Honourable the Minister of Justice, that on the 8th July, 1874, an Order in Council was passed agreeing upon a conventional boundary between the province of Ontario and the Dominion, in the following terms :—

1. That the conventional boundary of the province of Ontario, for the purposes set forth in the said Order in Council of the 3rd of June instant, shall be on the west of the meridian line passing through the most easterly point of Hunter's Island, running south until it meets the boundary line between the United States and Canada, and north until it intercepts the fifty-first parallel of latitude, and the said fifty-first parallel of latitude shall be the conventional boundary of the province of Ontario on the north.

2. That all patents for lands in the disputed territory to the east and south of the said conventional boundaries, until the true boundaries can be adjusted, shall be issued by the Government of Ontario; and all patents for lands on the west or north of these conventional boundaries, shall be issued by the Dominion Government.

3. That when the true west and north boundaries of Ontario shall have been definitely adjusted, each of the respective governments shall confirm and ratify such patents as may have been issued by the other for lands then ascertained not to be within the territory of the government which granted them, and each of the respective governments shall also account for the proceeds of such lands as the true boundaries, when determined, may show to belong of right to the other.

4. That the Government of the Dominion shall transfer to the Government of the province of Ontario all applications for lands lying to the east and south of the conven-



tional boundaries, and also all deposits paid on the same; and the Ontario Government shall transfer to the Dominion Government all applications for lands lying to the west and north of the said boundaries, and likewise all deposits paid thereon; and each of the said applications as are *bona fide* and in proper form shall be dealt with finally, according to the priority of the original filing; and where applications for the same lands have been filed in the departments of both governments, the priority shall be reckoned as if it had been filed in one and the same office.

The undersigned has further the honour to submit, for the information of the Minister of Justice, a map showing the territory included in the several descriptions in sections 1, 2, 3 and 8 of the Act of the Ontario legislature, passed at the last session thereof, chapter 19.

Respectfully submitted.

J. S. DENNIS,  
*Deputy of the Minister of the Interior.*

B.

"In addition to the above Acts of the legislature of British Columbia, a bill was passed intituled: 'An Act to amend the Gold Mining Amendment Act, 1872,' which Bill was reserved by his Honour the Lieutenant-Governor, for signification of the pleasure of his Excellency the Governor General thereon. The Act is as follows:—

"Every mining court in this province shall, in addition to its present jurisdiction, have jurisdiction in all personal actions arising within the limits of its district, and the gold commissioner presiding in any such court, shall have the like powers to enforce any judgment, decree, rule or order of such court, as are conferred by section 12 of the Gold Mining Amendment Act, 1872. The provisions of this Act shall only have effect in the electoral district of Kootenay, and in that part of the province known as Cassiar."

The Attorney General for the province reported on this Act to the Lieutenant-Governor as follows:—

"This Act gives jurisdiction in all personal actions to the gold commissioners in Kootenay and Cassiar, and appears to trench upon the provisions of the 96th section of the British North America Act, which vests the appointment of the supreme and county court judges in the Governor General alone, inasmuch as it provides that the paid employees of the local government in the district aforesaid, shall have and exercise almost as much power as a supreme or county court judge. As I think this legislature has not the power, in effect, to make these appointments, I would suggest that the Act be reserved for the consideration of his Excellency the Governor General."

I refer to the remarks made upon the Mining Court in connection with the 11th section of Act No. 14. This bill is an illustration of the danger I have above alluded to, as, if it became law, the jurisdiction of the Mining Court in the districts referred to, will be greater than the jurisdiction of the County Court, and equal to that of the Supreme Court. It might be convenient that a somewhat extended jurisdiction should be given to a district court or magistrate in the districts of Kootenay and Cassiar, thereby avoiding the expense and delay attendant upon a judge of the Supreme Court travelling to these distant parts of the province, for the purpose of holding assize, and it is probable that this bill was passed with that object in view. I would mention, however, that even were this bill assented to, it would be necessary for a supreme court judge to proceed to the district mentioned for the trial of criminal cases. Upon the whole, I recommend that the assent of the Governor General be not given to this bill, which in fact should have been disposed of by the local authorities themselves.

The following are the remarks above alluded to:—

"The section of the Act now under consideration further extends the powers of the gold commissioner as judge of the mining court. The 96th section of "The British North America Act, 1867," empowers the Governor General to appoint the judges of the

superior, district and county courts in each province, except those of the court of probate in Nova Scotia and New Brunswick.

"By the 92nd section the provincial legislatures have power to make laws in relation to the administration of justice, including the constitution, maintenance and organization of provincial courts both of civil and criminal jurisdiction. They have also power to legislate respecting the establishment and tenure of provincial offices, and the appointment and payment of provincial officers."

"If there be power in the legislature of British Columbia to establish this so-called mining court, and appoint and pay the judges thereof, it must be found in the section I have just quoted. I think, however, that this court, which is declared to have original jurisdiction, to be a court of law and equity, and a court of record with a specific seal, and for the purposes of enforcing its judgments orders and decrees, to have (with certain exceptions) the same powers and authority, legally and equitably, as are exercised in the supreme court of civil justice of British Columbia, by any judge thereof, which has power also to summons a jury to assess damages, may be considered a court, within the meaning of the 96th section of the Confederation Act."

"It is not, in my opinion, necessary to bring a provincial court within the provisions of this section, that it should be called by the particular name of superior, district or county court."

"The exception to that section itself indicates, that the courts of probate in Nova Scotia and New Brunswick would unless specially excepted, have come within the definition of superior, district or county courts."

"It will be readily seen how easy it would be for the local legislature, by gradually extending the jurisdiction of those mining courts, and by curtailing the jurisdiction of the county courts, or supreme courts as now established, to bring within their own reach, not only the administration of justice in the province, but also practically the appointment of the judges of the courts in which justice is administered."

Inasmuch, however, as legislation of a similar nature to that contained in the section now under consideration, has been left to its operation in previous years, and as the provisions of the section appear to be convenient, I do not recommend a disallowance of the Act.

### C.

"Were this the first enactment of a similar nature passed by a provincial legislature, I would hesitate long before recommending that it should be left to its operation, as it appears to entrench upon the powers conferred upon the Governor General of Canada, by the 96th section of "The British North America Act, 1867," which section is as follows:

"The Governor General shall appoint the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick."

Inasmuch, however, as provincial legislation has been previously left to its operation, whereby certain judicial powers in civil matters have been conferred upon stipendiary magistrates, and whereby courts presided over by the stipendiary magistrates, and, having in effect the powers of the division courts of Ontario, have been constituted, I do not feel at liberty to object to the provisions of the present Act, provided the jurisdiction possessed by the former legislation upon the subject, which has been left to its operation, has not in effect been substantially extended.

In a report, dated 29th September last, upon the acts of last session of the legislature of British Columbia, I had occasion to remark at some length upon legislation of a nature similar to that now under consideration, and I then pointed out the danger which might ensue from this class of legislation.

I refer to that report. The Act 31st Vic., 1868, Ontario, cap. 35, which was passed to provide for the organization of the territorial district of Muskoka, and under which the stipendiary magistrate of that district was appointed, declared that certain provisions of cap. 128 of the Consolidated Statutes of Upper Canada, intituled: "An Act respecting the administration of justice in unorganized tracts," should extend and apply



to said district of Muskoka. Similar provisions are contained in the Act 33rd Vic. (1869) Ontario, cap. 24, which provides for the organization of the territorial district of Parry Sound, and in the Act 34 Victoria, Ontario (1871) cap. 4, which provides for the organization of the territorial district of Thunder Bay. The provisions of the Act of the Consolidated Statutes thus made applicable to these territorial districts in effect providing for the holding of a court of civil jurisdiction in each district under the name and style of the first (or other, as the case may be) Division Court for the district of, &c., over which the stipendiary magistrate should preside, and be the sole judge in all actions brought in such Division Court and determine all questions as well of fact as of law, in relation thereto, in a summary manner, with power, should he think fit, to summon a jury of five persons to try the fact controverted in a case.

For every such court, provision is made for an appointment of a clerk and one or more bailiffs. The jurisdiction of the court is declared to be over all personal action save certain excepted ones, where the debtor's damages claimed are not more than \$100. Each court is to have a seal, with which all summonses and other processes shall be sealed or stamped.

Suits are to be commenced by summons to the defendant, issued by the Clerk containing the particulars of the plaintiff's demand.

Provision is made for the subpoenaing of witnesses. That the judgment of the court, with certain exceptions, be final and exclusive. Provisions are made for the enforcement of the judgment by execution. Proceedings and suits against absconding debtors are provided for.

The magistrate is given jurisdiction, on the consent of the parties, to try and determine cases up to \$800 in amount.

In addition to the Act in the Consolidated Statutes above referred to, which has been made applicable to the three districts mentioned, certain provisions of the Act respecting division courts, being cap. 19 of the Consolidated Statutes of Upper Canada, and of the Act to amend the Acts respecting division courts, being cap. 23 of 32 Victoria (1868-69), Ontario, are made applicable to the district of Parry Sound and Thunder Bay. The provisions of the Act respecting divisions courts referred to, relate to the examination of judgment debtors, and claims of landlords to goods seized in execution.

The provisions of the Act 32 Victoria (1868-69), Ontario, amending the acts respecting division courts, provide that all judgments in the division courts shall have, and continue to have, the same force and effect as judgments of courts of record.

Provisions are made for the entry of final judgments by the clerk when the claim is not disputed, and proceedings for the garnishment of debts are provided for.

It will be thus seen that the jurisdiction of the courts presided over by stipendiary magistrates of the three districts above mentioned was, before the passing of the act now under consideration, practically as extensive as the jurisdiction of the various division courts in the province, and in some cases was more extensive. The present act does not, therefore, seem to extend to any substantial extent, the jurisdiction previously possessed by those courts.

The section now under consideration, however, not only declares that the stipendiary magistrate as division court judge shall have like jurisdiction and powers as are now possessed by the county court judges in division courts in counties, but goes on to provide that the provisions of law, from time to time, in force in Ontario relating to the division courts in counties and the officers thereof, &c., shall apply the division courts of these districts.

This provision is, I think, objectionable, inasmuch as it may be quite within the legislative authority of Ontario to increase the jurisdiction of the division courts in counties, as such courts are now presided over by judges appointed by the Dominion, yet their jurisdiction might be increased to an extent that might be objectionable in the case of these district division courts, the judges of which are appointed by Ontario. Were the section limited in its operation to the jurisdiction and power, &c., of the county court judges in division courts in counties, as now existing, I would not for the reasons above mentioned, recommend any interference with the Act.



I recommend, however, that the attention of the Lieutenant-Governor be called to the objection referred to, with a request that his government may promote at the next session, and before the time expires for determining as to the disallowance of the Act, amendatory legislation.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th February, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd February, 1880.

I have the honour to report upon the Act passed by the legislature of Ontario, at its last session, namely:—

Cap. 50.—“An Act respecting certain dams on Beaver Creek and other streams in the counties of Hastings and Addington.”

Inquiry has been made from the Department of Marine and Fisheries, asking if any objection to the Act exists in connection with navigation, and a reply has been received, that no objection exists to the allowance of the Act, so far as navigation is concerned. I recommend that the Act be left to its operation.

Z. A. LASH,

*Deputy Minister of Justice.*

I concur.

JAS. McDONALD, Minister of Justice.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd March, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th March, 1880.

I have the honour to report:—That, under the Order in Council of the 12th February, respecting an Act passed by the legislature of Ontario at its session, 1879, intitled: “An Act respecting the administration of Justice in the northerly and westerly parts of Ontario,” it was provided, that unless the same were repealed within the time for disallowance, it should be disallowed.

A copy of my report and of the Order in Council passed thereon, were transmitted in due course to the Ontario Government. A reply has just now been received, from which it would appear that the Act has not been repealed, but that another Act, making provision for the administration of justice in the locality has been passed, but which Act is not to go into operation unless, and until, the Act now under consideration, be disallowed.

The Attorney General of Ontario states that “the new Act confines the jurisdiction of stipendiary magistrates, as regards subject-matter and amount, to the limits provided for, by the law in force before confederation; and avoids any disputable reference to the extent of the territory within which the Act is to operate, leaving that question to be wholly determined as may be, by the law and the right.”

I have not yet had an opportunity of seeing this Act, and therefore pass no opinion with respect to it. It will have to be considered and reported upon in the usual way.

Pursuant to the provisions of the Order in Council of the 12th February, I think the Act passed by the legislature of the province of Ontario, first above referred to, should be disallowed, and I recommend accordingly.

Before closing the report, I desire to refer to some of the remarks of the Attorney General of Ontario, with respect to the Act.

In my previous report I pointed out two grounds upon which it was necessary to take action with respect to the allowance or disallowance—the first being on account of its assuming to make provision for the administration of justice over territory, the

right of Ontario to which, is not admitted by this Government—the second was, that the Act encroached upon the powers of the Dominion Government with respect to the appointment of judges.

It is unnecessary to reply to the arguments adduced by the Attorney General, with respect to the boundaries of Ontario, as any discussion thereon, upon a reference of this kind, would seem inopportune.

With respect to the second ground, however, the Attorney General points out that the provisions respecting the "District Court," referred to in the Act, were intended to apply only to the court presided over by the judge resident in Sault Ste. Marie, who received his appointment before confederation, and whose successor would have to be appointed by the Governor General, and that the provisions respecting the court do not apply to the court presided over by the stipendiary magistrate referred to in the Act.

In this view, so much of the Act as relates to that district court would not seem to be open to the same objections, as those portions which refer to the stipendiary magistrates, but the objections pointed out in my previous report to those portions of the Act which refer to the stipendiary magistrates and the courts presided over by them still remain, and of themselves, in my opinion, would warrant the disallowance of the Act.

The Attorney General remarks, in referring to the disputed boundary question, that "the Minister of Justice does not, however, advise the disallowance of the Act on this account, but advises its disallowance upon the ground of the other objection which he suggests, namely: that the Act seems to encroach upon the powers of the Dominion Government with respect to the appointment of judges."

It would seem immaterial upon which of the two grounds the disallowance was recommended, but I would point out that the recommendation in my report was a general one, and not confined to either ground.

JAS. McDONALD,  
*Minister of Justice.*

[*Proclamation disallowing the above mentioned Act, published in the Canada Gazette on the 22nd day of March, 1880. Vol. XII., No. 39, p. 1309.*]

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ONTARIO, 43RD VICTORIA, 1880.

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1ST SESSION—4TH LEGISLATURE.

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*Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 14th February, 1881.*

On a report, dated 3rd February, 1881, from the Honourable the Minister of Justice, upon the Statutes passed by the legislature of the province of Ontario, in the year 1880, consisting of chapters 1 to 83 inclusive ;

The minister recommends that these Acts be left to their operation, with the exception of cap. 10 : “ An Act to abolish priority of and amongst execution creditors,” with respect to which the minister states that a separate report will be made.

The committee submit the above recommendation for your Excellency’s approval.

J. O. COTÉ,  
Clerk Privy Council.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th March, 1881.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1881.

I have the honour to report upon chapter 10 of the Statutes of Ontario, passed in the forty-third year of Her Majesty’s reign, A.D. 1880, intituled : “ An Act to abolish priority of and amongst creditors.”

Taking this Act section by section, much can be said in favour of the view that its provisions are within the legislative authority of the provincial legislature, but, taking its effect as a whole, much can be said in support of the contention that it entrenches upon the subject of bankruptcy and insolvency, over which the Parliament of Canada has exclusive legislative authority.

In view of the doubts which exist with respect to the matter ; in view, also, of the fact that the insolvency laws of the Dominion have been repealed ; in view, also, of the provisions of section 28 of the Act which provides that it is not intended to interfere with the insolvency laws, which may, from time to time, be in force, but is intended to be subject to such laws, and subject, as aforesaid, to apply to all debtors whether solvent or not ; in view, also, of the fact that if the power of disallowance be not exercised, any person wishing to test the constitutionality of the Act in any of the courts, will be at liberty to do so, I recommend that the power of disallowance be not exercised with respect to the said Act.

JAS. McDONALD,  
Minister of Justice.



## ONTARIO, 44TH VICTORIA, 1881.

2ND SESSION—4TH LEGISLATURE.

CORRESPONDENCE, Petitions, Papers, Reports and Orders in Council, relating to an Act of the Legislature of the Province of Ontario (Chapter 11), intituled: "An Act for protecting the Public Interests in Rivers and Streams and Creeks," disallowed by His Excellency in Council.

*Petition of Mr. Peter McLaren to Governor General.*

To His Excellency the Right Honourable the MARQUIS OF LORNE, K.T., G.C.M.G., P.C., Governor General of Canada.

*In Council Assembled.*

The humble petition of Peter McLaren of the town of Perth, in the county of Lanark, province of Ontario, lumber manufacturer, sheweth:—

(1.) Your petitioner is the owner of a large steam saw-mill and lumber yard situated at the village of Carleton Place, in the county of Lanark, near the banks of the Mississippi River, which flows through the said village, and down which the logs required at such mill are driven during the season of navigation. Along this stream and its tributaries, your petitioner is now, and has for many years past, been engaged in extensive lumbering and timber operations, in connection with which he usually has several hundred men constantly engaged during the whole year, and in which business he has embarked a great portion of his capital.

(2.) A few miles up the river from Carleton Place the first great natural obstruction, known as "High Falls," is met with. The bed of the stream at this point, and both above and below, and on each side thereof, is vested in fee simple, absolute in your petitioner, who has expended a large sum of money in the purchase thereof from the former owners who had spent sums in clearing out the bed of the stream, and who had erected valuable improvements in the stream itself, consisting of dams and slides, and so rendered the stream at this point passable for timber and saw-logs during freshets. Since your petitioner acquired the same, he made considerable expenditure thereon in maintaining and repairing the said constructions erected, and in erecting others of a similar kind.

(3.) From High Falls to the head waters of the Mississippi, which head waters are known as "Louise Creek," and are situated in the township of Denbigh, in the county of Lennox and Addington, a distance of about fifty miles on said stream, on the South Branch of the Mississippi, and on Swamp Creek and Buckshot Creek, which are streams tributary to the Mississippi, which extend over a distance of more than 100 miles, your petitioner has, by his own private expenditure, established a vast and complete system of water communication, by means of which he is enabled each year to float his logs down to the mill at Carleton Place and his timber to the Ottawa River.

(4.) The work of improving the said streams, so as to establish such system of water communication, was commenced above the High Falls nearly thirty years ago, and has been going on from time to time up to the present.

(5.) Your petitioner has at various times purchased, along the streams, upwards of 50 separate tracts of land, which were, and are of little or no use whatever, except for the construction of improvements thereon, for the purpose of rendering the

streams navigable, such tracts of land covering the bed, and both sides of the stream at particular points. The work of improving consists generally of clearing out stones, deepening channels, blasting rocks, widening narrow places, erecting piers, side dams, reserving dams, slides and canals; but the greatest portion of the expenditure was incurred in the erection of dams and slides, to overcome the natural obstructions of rapids and falls.

(6.) Your petitioner has expended in the purchase of land on which to construct such improvements, in the purchase of improvements already made, and in those which he has himself constructed, upwards of a quarter of a million of dollars.

(7.) Although it is true that, along the said stream and its tributaries, there are stretches of water which, without improvements, were capable of floating logs and timber, yet along almost the whole course of the main stream, and the aforesaid tributaries, the falls and rapids are so numerous and obstructive, as to render such streams useless for floating purposes, without the means afforded by such system of improvements.

(8.) For a great many years your petitioner has had complete and sole control of the said system of improvements, and his right to such control was, on all hands, conceded by settlers and lumbermen, in the section of the province through which streams flow. Having such complete and sole control, your petitioner was enabled so to use the said system, as to float down annually from the head waters of all the said streams, immense quantities of timber and saw-logs, which could not have been brought down the same, without the aid of the artificial means above referred to.

(9.) The great bulk of the timber along those streams is now to be found near the head waters, and the usual time occupied in driving logs from those points down to your petitioner's mill at Carleton Place, even with the aid of the said improvements, is about three months, although the ordinary spring freshets do not last one-half of that time. Your petitioner is enabled, by means of the great number of reserving dams, erected by him along the said streams, to retain the water therein, and to utilize it according to his judgment as the logs are coming down, and in this way to create artificial freshets which accompany the logs down, long after the natural freshets have subsided; in fact, by reason of the improvements the whole of the said stream and the above mentioned tributaries from the "High Falls" to their head waters, now consist of a series of locks and artificial reservoirs which, being operated by one controlling power, are rendered effective for the work intended, but which, if not operated by one controlling power, would be ineffective and useless. Unless your petitioner had the sole control of this system of water power on the said streams, it would be impossible to work it, so as to carry on his operations with any profit.

(10.) During the period of time anterior to the construction of the said improvements, almost all the timber and saw-logs cut along the upper parts of the Mississippi and its tributaries, were drawn by horses to the rivers adjacent to the Mississippi, and were brought to market by means of such rivers, it having been generally conceded by the lumbermen in those districts that the natural obstructions in the Mississippi and its tributaries were so formidable as to render it impracticable to improve them, so as to render them navigable or floatable for timber or logs. In the purchases aforesaid, and in the course of the work of improving the said streams, and in the general lumbering operations of your petitioner, with the consequent expenditure thereabout, he has conferred great benefits upon the settlers, and has opened up for settlement large tracts of country which would otherwise have remained wilderness land.

(11.) None of the patents from the crown to your petitioner, and to those under whom he claims the lands through which the said streams and the tributaries flow, and upon which he has erected such improvements, contain any reservation of right to the crown or the public to the use of such streams in common with the patentee's, respectively, and your petitioner when he expended his money as aforesaid, was advised by counsel, and believed, and still believes, that such streams where they passed through lands owned by him, became his private property, and that he would be entitled to the free, uninterrupted and exclusive use and control of the same, and more particularly of the improvements erected by him thereon, and by those from whom he had purchased; and if he had believed that the general public would be entitled to the use of the same



in common with himself, he would not have expended his capital thereon, and the said streams would probably to this day have been closed to the public, because of the natural obstacles therein and their consequent uselessness for navigating purposes.

(12.) The conveyances and patents under which your petitioner claims title to the lands aforesaid, comprise all the great natural obstructions on the said streams and its tributaries, and every obstacle therein which it was difficult to overcome.

(13.) Your petitioner in his own right, as riparian proprietor and as the locatee, patentee and grantee of the fee simple of the bed thereof, is the owner of such streams where they pass and flow through the lands owned by him, and has, by the common law in force in this province, full, free and unrestricted control of the same, with the right to use the same for his own private use and benefit, inasmuch as the said streams are private streams and do not come within the denomination of navigable waters.

(14.) In the year 1847, by the Act of the late province of Canada, 12 Vic., chap. 87, sec. 5, which was re-enacted in 1859, when the statutes of the late province of Upper Canada were revised, and which then became chap. 48, sec. 15 of the Consolidated Statutes of Upper Canada, and which was again re-enacted in 1877, when the statutes of the province of Ontario were revised, and which then became sec. 1 of chap. 115 of the Revised Statutes of Ontario, the right was given to the general public to float saw-logs and timber down the streams of this province during the spring, summer and autumn freshets.

(15.) It is generally conceded that, in the absence of the legislation just referred to, all streams within this province, which do not come under the denomination "navigable rivers," and being therefore private property, are not open to the public for the purpose of driving timber and saw-logs, but that the right to the use of private property for such purposes, is a right which can only be exercised by the consent of the owner.

(16.) In 1863, the first judicial construction was placed upon the Act, then being sec. 15 of chap. 48, of the Consolidated Statutes of Upper Canada. In the case of *Boale vs. Dickson*, decided in that year, and reported in the 13th volume of the Upper Canada common pleas reports, at page 337, it was decided that the right given by the Act to the use of private streams extended only to such streams as in their natural state, without improvements, would, during freshets, permit saw-logs, timber, etc., to be floated down the same. This decision was followed in the case of *Whelan vs. McLachlan*, reported in the 16th volume of the said common pleas reports, and in the case of *McLaren vs. Buck*, reported in the 26th volume of the same reports. The legislature of Ontario, having by sec. 1, chap. 115, Revised Statutes of Ontario, re-enacted sec. 15, chap. 48, Consolidated Statutes of Upper Canada in the same words, and after all these decisions it was assumed that the legislature had adopted the construction placed upon the original Act by the courts of the province.

(17.) Your petitioner has always contended that the Mississippi and its branches above mentioned, were not affected by the said Acts, because they were not, when in a state of nature, capable of being used for floating timber or saw-logs, even during the freshets, having been rendered available for that purpose solely by reason of your petitioner's improvements thereon, and your petitioner, until a short time ago, felt secure in his right to the full, free, uninterrupted and unrestricted use of his said improvements, relying, as he did, upon his rights thereto, and he continued annually to increase the improvements, to purchase more land along the said streams, and to spend considerable sums of money in maintaining the same, and in extending his operations in the woods contiguous thereto.

(18.) In the autumn and winter of the years 1879 and 1880 the lumbering firm of "Boyd, Caldwell & Son" commenced getting out timber and saw-logs on a timber limit near the head waters of the Mississippi and Buckshot Creek, such limit being properly a Madawaska limit, and although they drew the square timber from said limit to the Madawaska River, yet, as their saw-mill is at Carleton Place, they drew logs to the Louise Creek and Buckshot Creek, intending to float the same down the said creeks, and down the Mississippi to their mill, and, in so doing, to use the said improvements, and also to interfere with your petitioner's own operations on the said streams. Your petitioner promptly notified the said firm that he would not allow improvements on



Louise and Buckshot Creeks, your petitioner, on the 4th day of May, 1880, filed a bill in the Court of Chancery of Ontario, praying, among other things, that his right in the said streams should be declared, and that the said parties should be restrained from using his said improvements, and from driving logs through his said lands.

(19.) Before proceeding to a hearing and determination of the said chancery suit, your petitioners offered to allow the logs of the said firm to pass down the said streams and over his improvements, if the said parties would acknowledge his proprietary right in such improvements, and would pay a fair and reasonable compensation for the use of the same, and the costs of the filing of the said bill of complaint; but the said parties refused your petitioner's said offer, and announced their determination to resist your petitioner's rights to the utmost, and to establish that the said streams were open streams, and that your petitioner had no right to interfere with the free use by the public of the same.

(20.) The examination of witnesses in the same cause, took place at the town of Brockville on the 27th, 28th and 29th days of October last, and at the town of Perth on the 7th, 8th, 9th, 10th 11th, 13th, 14th, 15th and 16th days of December last, before his Lordship Vice-Chancellor Proudfoot, who after hearing the evidence of over 100 witnesses and the arguments of counsel for both parties, pronounced a decree on the said last-mentioned day, declaring that those portions of the Mississippi, Louise and Buckshot Creeks, which passed through your petitioner's lands, were not, when in a state of nature, either navigable or floatable for saw-logs or other timber, rafts and crafts down the same, and that your petitioner is entitled to the use of such portions of said streams freed from the interruption, molestation or interference of the defendants in the said suit, and that the latter had no right to the use of any part of the said streams, where they passed through your petitioner's lands for the purpose of driving timber and saw-logs, and a perpetual injunction was awarded to your petitioner, restraining the defendants therein named from interfering with your petitioner's use of the said streams, and from using your petitioner's improvements therein for the purpose of driving their timber and saw-logs.

(21.) Your petitioner has expended upwards of \$7,000 in obtaining the above declaration of his rights in the said streams.

(22.) The defendants in the said chancery suit gave prompt notice of their intention to appeal to the Court of Appeal for Ontario, against the said decree, and the said appeal is now pending in the said Court of Appeal.

(23.) After the filing of the said bill of complaint, and during the progress of the said chancery suit, your petitioner was repeatedly threatened by the Honourable the Commissioner of Crown Lands for the province of Ontario, that unless he abandoned his rights in the said streams, the Government of Ontario would cancel the licenses which your petitioner held for getting out timber on the limits tributary to the said streams, and the said commissioner endeavoured, by such threats, to force your petitioner to discontinue his said proceedings, which your petitioner refused to do, as he felt that the Government of Ontario had no right to interfere between him and a private firm, when he was simply asserting his legal rights.

(24.) The said firm of "Boyd, Caldwell & Son," having been defeated by the Court of Chancery, in their attempt to invade the rights of your petitioner, and as your petitioner believes, being advised that the said decree was in accordance with the laws of this province, applied to the Government of Ontario to introduce into the legislature of Ontario, a bill for the purpose of depriving your petitioner of the benefit of the said decree, and of enabling them to participate in the enjoyment of the rights in the said streams, for the acquisition of which your petitioner has paid so large a sum of money. In compliance, your petitioner believes, with such application, the Honourable the Commissioner of Crown Lands of Ontario did, during the last session of the parliament of that province, introduce the bill which, with a few important amendments, was finally passed by the said legislature, and received the assent of the Lieutenant-Governor under the title of "An Act for protecting the Public Interests in Rivers, Streams and Creeks." (Chap. 11.)

(25.) Your petitioner most respectfully begs leave to submit to your Excellency the pamphlet annexed to this petition, and as forming part thereof containing :—

(a.) A printed copy of the said bill, as originally introduced into the legislature of Ontario.

(b.) A protest issued by your petitioner against the passage of the said bill, and which protest was in the hands of members of the Government of Ontario and of members of the legislature of Ontario, before the second reading of the said bill was moved.

(c.) A record of the proceedings in the legislative assembly of Ontario, at the various stages of the bill in that legislature, together with the addresses of the members of the legislature upon the bill.

(d.) The said bill as finally passed.

(e.) A few extracts from leading newspapers within the province, containing expressions of public opinion in regard to the merits of the said bill.

(26.) Your petitioner most respectfully and humbly submits :

Firstly. That the said Act is *ultra vires* of the legislature of Ontario, inasmuch as the questions assumed to be effected thereby, relate exclusively to the trade and commerce of the Dominion of Canada, and therefore can only be dealt with by the Parliament of Canada.

Secondly. That the streams in question, although not navigable or floatable, when in a state of nature, and unimproved, yet by reason of the expenditure of your petitioner in improving the same, have become navigable for certain purposes, and therefore the said streams are now under the exclusive control of the Dominion of Canada, and the legislature of Ontario cannot legislate in respect thereto.

Thirdly. That the said Act is unconstitutional, in this, that it assumes to deprive your petitioner of extensive and important private rights, without providing adequate compensation therefor.

Fourthly. That the legislation embodied in the said Act is contrary to sound principles of legislation, because it is *ex post facto* in its operation ; because it represents interference on the part of the government, at the instance of one private individual, of his rights ; because it declares that to be the law in the past, which the courts of the province of Ontario have declared not to be the law, the decisions of such courts having been ratified and approved of by the legislature of Ontario, upon the revision of the statutes of Ontario, in the year 1877. Besides the legislature of Ontario has, without any demand in the public interest, assumed to interfere with private parties engaged in litigation, and while such litigation is still *sub judice*. Because it is in detriment of vested rights, and because it is at variance with the legislation of the Dominion of Canada, in respect to the public use for timber and log-driving purposes, of improvements on private streams.

Your petitioner most respectfully and humbly submits :

That an Order should be made by your Excellency for the disallowance of the said Act.

And your petitioner will ever pray.

PETER McLAREN.

*Further Petition from Mr. McLaren.*

*To His Excellency the Right Honourable the Marquis of Lorne, K.T., G.C.M.G., P.C., Governor General of the Dominion of Canada.*

The petition of Peter McLaren, of the town of Perth, in the county of Lanark, lumberman,

Humbly sheweth :

That since your petitioner had the honour of presenting his petition to your Excellency, praying that the Act passed by the legislature of the province of Ontario at its last session of the House of Assembly of that province, intituled : "An Act for Protecting the Public Interests in Rivers, Streams and Creeks," be disallowed by your Excel-



lency, your petitioner begs to state that Messrs. Boyd, Caldwell & Son have cut away the dam constructed by, and belonging to, your petitioner, at the foot of Long Lake, in the township of Clarendon, one of the improvements referred to in the said petition.

2. Such dam was erected by your petitioner for the purpose of retaining the water coming down the stream known as the Mississippi, and reserving it until the timber and logs which your petitioner cuts on the lands and timber limits in the neighbourhood of that stream and its tributaries belonging to him, are driven down to this part of said river, and without which it would be impossible for your petitioner to drive his timber or saw-logs from the head-waters of the said stream down the same in one season.

3. The said dam was an expensive structure, costing a large sum of money, to wit, in or about the sum of three thousand dollars.

4. The said Messrs. Boyd, Caldwell & Son have likewise taken forcible possession of a dam erected by your petitioner at the outlet of Buckshot Lake, and being at the head of Buckshot Creek, and have prevented and are preventing your petitioner's men who come and are engaged in driving his logs down the Buckshot Creek from permitting the water retained in and by the dam to flow, as required by your petitioner to flush the said creek, so as to give a sufficient depth of water in the same, to enable your petitioner to float his logs down to the Mississippi.

5. The said Messrs. Boyd, Caldwell & Son on the 14th day of the present month of April, demanded of your petitioner that he should fix the tolls at which he would permit their logs to pass through your petitioner's improvements on the said Mississippi stream and Buckshot Creek, threatening that, in default of your petitioner allowing them to pass their logs through the said improvements, they would cut his dams, mentioning, especially, the dams at the foot of Long Lake and at the High Falls.

6. Your petitioner, refusing to recognize the validity of the said Act, for which he has petitioned the disallowance, for the reasons set forth in the former petition to your Excellency, declined to permit the passage of the logs of the said Messrs. Boyd, Caldwell & Son through his improvements, or to fix any toll for the passage thereof, but he renewed his former offer of permitting their passage if the said Messrs. Boyd, Caldwell & Son would acknowledge your petitioner's proprietary rights, and pay the costs of the litigation caused by the unjust attempt to force a passage through his improvements.

7. The reply of Messrs. Boyd, Caldwell & Son is the destruction of your petitioner's dam at the foot of Long Lake, and the taking possession by force of his dam at or near the outlet from Buckshot Lake.

8. Your petitioner is advised that so long as the said Act remains in force, and unless and until it is disallowed by your Excellency, as your petitioner humbly prays it may be, your petitioner has no redress in the courts for the destruction of his property or to prevent the destruction of other dams and improvements made by him on the said streams, which the said Messrs. Boyd, Caldwell & Son threaten, and will, as your petitioner believes, do, unless the said Act be disallowed without unnecessary delay.

9. Your petitioner is further advised that under the provisions of said Act, express permission is given to all and every person driving logs down the said stream (or other streams) to remove, in the language thereof, "any obstruction from such river, creek or stream \* \* \* necessary to facilitate the floating and transmitting of such saw-logs \* \* \* down the same," and it is under colour and pretense of this unrighteous provision, that the said Messrs. Boyd, Caldwell & Son are now acting in destroying your petitioner's property.

10. Under these circumstances, entailing great and serious loss on your petitioner, he ventures again humbly to represent to your Excellency that, in addition to the other reasons given by him in the said former petition for the disallowance of the said Act, your petitioner will be prevented by those acts of waste, from getting his logs to his mills, and will sustain, and has already, sustained great damage by the high-handed acts of the said Messrs. Boyd, Caldwell & Son, and he fears that much of his said property will be irreparably destroyed, for which, so long as the said Act remains in force, your petitioner is absolutely without redress.



Your petitioner, therefore, prays that your Excellency may be graciously pleased to take the matter of the disallowance of the said Act into your Excellency's consideration at an early day, and to disallow the same, and your petitioner, as in duty bound, will ever pray.

PETER McLAREN.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 21st May, 1881.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th May, 1881.

I have the honour to report, with respect to an Act passed by the legislature of the province of Ontario at its last session (chap. 11), intituled: "An Act for Protecting the Public Interests in Rivers, Streams and Creeks."

Application for the disallowance of this Act has been made by Mr. Peter McLaren, of the town of Perth, lumber manufacturer, on the ground, in effect, that the Act in question deprives him of vested private rights without compensation, and practically reverses the decision of the Court of Chancery in a case brought by him against one Caldwell, whereby Mr. McLaren's exclusive right to the use of improvements erected by him, or those through whom he claims, on certain streams in the province of Ontario, was established by a decree of the court.

The Act, by its first section, declared that all persons have, and always have had, during the spring, summer and autumn freshets, the right to float and transmit saw-logs, &c., down all rivers, creeks and streams, in respect of which the legislature of Ontario has authority to give this power, and in case it may be necessary to remove any obstruction from river, creek or stream, or construct any apron, dam, &c., necessary to facilitate the floating of saw-logs, &c., down the same, it shall be lawful for the person requiring to float down the saw-logs, &c., to construct such apron, dam, &c.

The second section declares that, in case any person shall construct, in or upon such river, creek or stream, any such apron, dam, &c., or shall otherwise improve the floatability of such river, creek or stream, such persons shall not have the exclusive right to the use or control thereof, but all persons shall have a right to use them, subject to the payment, to the person who has made such constructions and improvements, of reasonable tolls.

The third section extends the operations of sections 1 and 2 to all rivers, creeks and streams mentioned in the first section, and to all constructions and improvements made therein, whether the bed of the river, &c., or the lands through which it runs, belongs to the crown or not.

The fourth section empowers the Lieutenant-Governor in Council to fix the amounts which any person entitled to tolls under the Act, shall be at liberty to charge on saw-logs, &c.

The fifth section extends the previous provisions of the Act to all such constructions and improvements as may hitherto have been made, as well as to those hereafter constructed.

The sixth section gives to all persons driving saw-logs, &c., down the streams, the right to go along the banks.

The seventh and last section declares that, if any suit is now pending, the result of which will be changed by the passage of this Act, the court may order the costs of the suit to be paid by the party who would have been required to pay the costs, if the Act had not been passed.

It is tolerably clear that this section refers specially to the suit of McLaren against Caldwell, above referred to.

It appears that Mr. McLaren is the owner of certain streams, which he makes use of for the purpose of floating down saw-logs from the timber limits from which he takes the same, for the purposes of his business as a lumber manufacturer.

Mr. Caldwell is also a lumber manufacturer, owning timber limits in the neighbourhood of those owned by Mr. McLaren.

He attempted to float his logs down Mr. McLaren's streams, and through his improvements.

To prevent his doing so, the suit in Chancery above referred to was instituted, and a decree was made declaring Mr. McLaren exclusively entitled to the use of the streams and improvements, and restraining Mr. Caldwell from floating his logs down the same. That case has been appealed to the Court of Appeal. The effect of the Act now under consideration must necessarily be to reverse the decision of this suit.

Had this Act, instead of giving to any person desiring to make use of the streams, the right to use the same upon payment of certain tolls, absolutely expropriated the whole ownership of the streams for the public use, and provided a means of compensating the owners for the property so taken from them, it would be less objectionable in its features.

The effect of the Act, as it now stands, seems to be to take away the use of his property from one person and give it to another, forcing the owner, practically, to become a toll-keeper against his will, if he wishes to get any compensation for being thus deprived of his rights.

I think the power of the local legislatures to take away the rights of one man and vest them in another, as is done by this Act, is exceedingly doubtful, but assuming that such right does, in strictness, exist, I think it devolves upon this government to see that such power is not exercised, in flagrant violation of private rights and natural justice, especially when, as in this case, in addition to interfering with private rights in the way alluded to, the Act overrides a decision of a court of competent jurisdiction, by declaring retrospectively that the law always was, and is, different from that laid down by the court.

In reporting upon a reserved Bill of the Prince Edward Island legislature in 1876, the then Acting Minister of Justice reported to Council, and his Excellency was advised to withhold his assent from the Bill, one of the grounds being that the Bill was retrospective in its effect; that it dealt with the rights of the parties then in litigation, and that there was no provision saving the rights of private parties.

On the whole, I think the Act should be disallowed. I recommend, therefore, that the Act passed by the legislature of Ontario at its last session, intituled: "An Act for protecting the Public Interests in Rivers, Streams and Creeks," be disallowed.

JAMES McDONALD,  
*Minister of Justice,*  
per J. A. M.

[Proclamation disallowing the Act above mentioned, published in the Canada Gazette on the 21st day of May, 1881. Vol. XIV., No. 47, p. 1599.]

*Lieutenant-Governor of Ontario to the Secretary of State.*

GOVERNMENT HOUSE, TORONTO, 22nd October, 1881.

SIR,—Adverting to previous correspondence on the subject of the disallowance by his Excellency the Governor General in Privy Council, of the Act of the legislature of the province of Ontario, passed in the 44th year of Her Majesty's reign, chapter eleven, and intituled: "An Act for protecting the Public Interests in Rivers, Streams and Creeks," I have now the honour of transmitting, for the consideration of his Excellency the Governor General in Council, a copy of an Order in Council approved by me the 14th instant, and of the report of the Honourable Mr. Crooks, Attorney-General, *pro tempore*, therein alluded to.

I have, &c.,

J. B. ROBINSON,  
*Lieutenant-Governor of Ontario.*



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*Report of the Hon. Mr. Crooks, Acting Attorney-General, approved by His Honour the Lieutenant-Governor in Council on the 14th October, 1881.*

The report of the undersigned to his Honour the Lieutenant-Governor of Ontario, respecting the disallowance by his Excellency the Governor General in Privy Council, of the Act of the legislature of the province of Ontario, passed in the 44th year of Her Majesty's reign, chapter eleven, and intitled: "An Act for protecting the Public Interests in Rivers, Streams and Creeks," respectfully sheweth as follows:—

1. This Act was passed on the 4th March, 1881. It was received by his Excellency the Governor General on the 26th of the same month, and on the 19th of May following was disallowed by him—"by and with the advice of his Privy Council"—on the report of the Honourable the Minister of Justice, dated the 17th of May. This disallowance was published in the *Canada Gazette* on the 21st of May, but no other notice was received by the Government of Ontario until his Honour the Lieutenant-Governor, by his despatch of the 26th May to the Honourable the Secretary of State, had requested to be furnished by the Government of Canada, with a statement of the grounds upon which his Excellency had been advised to disallow an Act, which was undoubtedly in respect of matters placed by the British North America Act under the authority of the legislature of this province.

In reply, his Honour, on the 30th of May, received the despatch of the Honourable the Secretary of State, with a copy of the order of his Excellency the Governor General in Privy Council, based on the report of the committee of the Honourable the Privy Council, and adopting the reasons set forth in the report of the Honourable the Minister of Justice of the 17th of May for the disallowance of this Act. This report states that Peter McLaren, of the town of Perth, lumber manufacturer, had applied for the disallowance of this Act, on the ground that it deprived him of vested private rights without compensation, and practically reversed the decision of the Court of Chancery in a case brought by him against one Caldwell, whereby Mr. McLaren's exclusive right to the use of improvements erected by him, or those through whom he claimed, on certain streams in the province of Ontario, was established by a decree of the court.

3. The Minister of Justice, in his report, sets out the different provisions of the Act namely: the declaration of right as expressed in the first section of the Act, that in so far as the legislature of the province of Ontario had authority so to enact: "All persons have and are hereby declared to have, during the spring, summer and autumn freshets, the right to float and transmit saw-logs, timber, &c., down all rivers, creeks and streams, in respect of which the legislature of Ontario has authority to give this power, and in case it might be necessary to remove any obstructions from such river, creek or stream, or construct any apron, dam, &c., necessary to facilitate the floating of saw-logs, timber, &c., down the same, it should be lawful for the person requiring to float down the saw-logs, timber, &c., to remove such obstruction and to construct such apron, dam, &c."

The report also gives the effect of the second section of the Act which declares that: "In case any person shall construct in or upon such river, creek or stream, any such apron, dam, &c., or shall otherwise improve the floatability of such river, creek or stream, such persons shall not have the exclusive right to the use or control thereof; but all persons shall have a right to use them, subject to the payment to the person who has made such constructions and improvements, of reasonable tolls." By the third section of the Act, the provisions of the first and second sections are extended to all rivers, creeks and streams mentioned in the first section of the Act, and to all constructions and improvements made therein, whether the bed thereof or the land through which it runs has been granted by the crown or not, and, if granted by the crown, shall be binding upon such grantees and their assigns. The fourth section empowers the Lieutenant-Governor in Council to fix the amounts which any person entitled to tolls under the Act shall be at liberty to charge on saw-logs, &c. The fifth section extends the previous provisions of the Act to all such constructions and improvements as may hitherto have been made, as well as to those hereafter constructed. The sixth section



gives to all persons driving saw-logs down the streams, the right to go along the banks. The seventh and last section declares that if any suit is now pending, the results of which will be changed by the passage of this Act, the court may order the costs of the suit to be paid by the party who would have been required to pay the costs, if the Act had not been passed.

4. The report of the Minister of Justice thereupon proceeds to state that it is tolerably clear that the last section refers specially to the suit of McLaren against Caldwell, and offers the following grounds for the disallowance of the Act :

"Had this Act, instead of giving to any person desiring to make use of the stream, the right to use the same upon payment of certain tolls, absolutely expropriated the whole ownership of the streams for the public use, and provided a means of compensating the owners for the property so taken from them, it would be less objectionable in its features. The effect of the Act as it now stands seems to be to take away the use of the property from one person and to give it to another, forcing the owner practically to become a toll-keeper against his will, if he wishes to get any compensation for being deprived of his rights. I think the power of the local legislature to take away the rights of one man and vest them in another, as is done by this Act, is exceedingly doubtful ; but assuming that such right does in strictness exist, I think it devolves upon this government to see that such power is not exercised in flagrant violation of private rights and natural justice, especially when, as in this case, in addition to interfering with private rights in the way alluded to, the Act overrides a decision of a court of competent jurisdiction, by declaring retrospectively that the law always was and is different from that laid down by the court."

After reference to the reserved Bill of Prince Edward Island," "To amend the Land Purchase Act of 1875," which failed to receive the assent of the Governor General, the minister concludes his reasoning and reports that "on the whole" he thinks the Act should be disallowed.

5. The application of McLaren for the disallowance of this Act was considered and given effect to, without any notice to the Government of Ontario, and this appears to the undersigned to be in direct violation of the definite settlement between the imperial, Dominion and provincial governments in the first year of confederation respecting legislation, and the respective powers and courses of procedure as to the disallowance of Acts, or the assent to, or dissent of, bills reserved, by the imperial and Dominion governments, of Canadian, and provincial enactments respectively.

6. Return No. 35, in the Sessional Papers of Canada for 1870, contains the correspondence on this subject between the Imperial, Dominion and Provincial Governments, and the order of the Governor General in Privy Council of the 9th June, 1868, approving of the memorandum of the Minister of Justice (then Mr. J. A. Macdonald), of the 8th June, 1868, which laid down as the result of the full and complete consideration given by him to this subject, a definite basis for governing all questions, and the respective relations of the several authorities concerned. The express object of this memorandum was the settlement of the course to be pursued by the Governor General in Council with respect to Acts passed by the provincial legislatures, in the exercise, under the British North America Act, of the same powers of disallowance, which had always theretofore belonged to the Imperial Government, with respect to Acts passed by the province of Canada.

7. The memorandum states that of late years the Imperial Government has not as a general rule, interfered with the legislation of colonies having representative institutions and responsible government, except in the cases specially mentioned in the instructions to the governors, or in matters of imperial, and not merely local interest ; that under the present constitution of Canada, the general government would be called upon to consider the propriety of allowance or disallowance of provincial Acts much more frequently than Her Majesty's Government had been with respect to colonial enactments ; that in deciding that any Act of the provincial legislature should be disallowed or sanctioned, the government must not only consider whether it affects the interests of the whole Dominion or not, but also whether it would be unconstitutional, in exceeding

the jurisdiction conferred on local legislatures, and in cases where the jurisdiction is concurrent, whether it clashes with the legislation of the Dominion Parliament; that it was of importance that the course of local legislation should be interfered with as little as possible, and the power of disallowance exercised with great caution, and only in cases where the law and general interests of the Dominion imperatively demanded, and the Minister of Justice thereupon recommended that the following course should be pursued:—

“That on the receipt, by your Excellency, of the Acts passed in any province, they be referred to the Minister of Justice for report, and that he, with all convenient speed, do report as to those Acts which he considers free from objection of any kind, and if such report be approved of by your Excellency in Council, that such approval be forthwith communicated to the provincial government.

“That he makes a separate report, or reports, on those Acts which he may consider,—

“1. As being altogether illegal or unconstitutional;

“2. As illegal or unconstitutional in part;

“3. In cases of concurrent jurisdiction, as clashing with the legislation of the general Parliament;

“4. As affecting the interests of the Dominion generally.

“And that in such report or reports, he gives his reasons for his opinions:—

“That when a measure is considered only partially defective, or when objectionable as being prejudicial to the general interests of the Dominion, or as clashing with its legislation, communication should be had with the provincial government with respect to such measure, and that in such case the Act should not be disallowed, if the general interests permit of such a course, until the local government has an opportunity of considering and discussing the objections taken, and the local legislature has also an opportunity of remedying the defects found to exist.”

8. The order of the Governor General in Council and a copy of this memorandum were officially communicated to the Lieutenant-Governors of Ontario, Quebec, Nova Scotia and New Brunswick, for the information and guidance of their governments; and also by the Governor General, in his despatch of the 11th March, 1869, to the Imperial Government, showing that, as an Act of state, the Dominion Government held itself to be bound by the principles and courses of procedure so laid down and settled upon, in the exercise of this power of disallowance under the Confederation Act.

9. Until the disallowance of the present Act, these principles and procedure had been universally observed by the Governor General in Council, in regard to all Acts passed by any of the provincial legislatures, in which any question of disallowance was raised, and the different ministers of Justice hitherto have, in their reports, prescribed by the Order in Council of the 9th June, 1868, strictly kept within such principles and have followed the specified procedure.

10. It will be seen that it was definitely settled that the several objections to any Act which the Minister of Justice was authorized to report upon, were confined to cases:—

(1.) Where the Act was altogether or in part constitutional, *i. e.*, not within the subjects of provincial legislation authorized by the Act of confederation;

(2.) Which might be within the subject of both Dominion and provincial legislation so authorized, when the latter clashes with the former; and

(3.) Affecting the rights or interests of the Dominion generally, as distinguished from provincial or local.

And the Minister of Justice was also required to set forth his reasons for reporting against any provincial Act on any of these grounds, and in every such case the provincial government was to have an opportunity of considering and discussing the objections taken, and of remedying any defect.

11. It is, therefore, manifest that the Minister of Justice, in reporting against the Act, in the present case, has disregarded the plain duty imposed upon him by the terms, under which the Dominion Government bound itself to the different provinces to exercise this power.



12. The grounds taken by him are the renewal of the same reasons on which an amendment was proposed in the Legislative Assembly, on the third reading of the bill, when Mr. Meredith moved, seconded by Mr. Morris, "That while the House is willing to pass such enactments as may be necessary for protection of the public interests in rivers, streams and creeks, it is of opinion that the bill is calculated to interfere with important private interests, without making adequate compensation for such interference, and is, therefore, opposed to sound principles of legislation, and calculated to form a dangerous precedent, and ought not, as now framed, to become law." The motion was lost on a division, by a vote of 23 to 56.

13. The Minister of Justice also argues that if this Act had absolutely appropriated the whole ownership of the streams for the public use, and provided compensation, it would be less objectionable in its features. The minister has not ventured to deny the legislative authority of the provinces to so enact, if thought expedient in the public interest. The point of his objection is—"That the Act seems to take away the use of his (the owner's) property from one person, and give it to another, forcing the owner, practically, to become a toll-keeper against his will, if he wishes to get any compensation, for being thus deprived of his rights."

The mode of compensation, which would be just to all parties, is certainly a matter to be considered and determined by the representatives of the people in provincial Parliament assembled, and not by the Minister of Justice or the Dominion Government, on the private *ex parte* statement of a private individual.

14. If the Minister of Justice had considered the language of the first section of the Act, it would have informed him in distinct terms that the legislature had, in the exercise of one of its most valued attributes, declared and settled the common law of the province on the subject of its rivers and streams, and corrected the erroneous interpretation of certain statutes relating thereto.

15. Until the decision of the vice-chancellor, in the suit of McLaren *vs.* Caldwell, gave colour to the exclusive pretensions of Mr. McLaren that he could absolutely debar any proprietor farther up the river, from enjoying the facilities supplied by its waters, on the ground that he (McLaren) owned its bed, and had made improvements on his own land, the province did not become aware that so injurious a conclusion was possible; and that the imperative duty was at once imposed on the provincial legislature, to settle beyond further question, that the use of all rivers and streams within provincial jurisdiction, for floating down saw-logs and timber, whether their beds were patented or not, were of common and public right, and that the owner of such lands could not lawfully control such stream, to the exclusion of other persons desirous of using the same for such purpose.

16. The public revenue of the province and the interests of all other persons would otherwise be practically at the mercy of every proprietor who had the advantageous position of Mr. McLaren, and the activity and impetus which, from the first settlement of the province, have prevailed in the manufacture of lumber, would have become paralyzed, to the great injury of provincial interests; it being not only the undoubted right but the pressing duty of the Ontario legislature to correct any construction of the provincial law which was contrary to the long usage and course of practical enjoyment of such easements, and would cause such great loss and injury, the legislature could further impose such regulations as it thought reasonable, without being subjected to any such reflection as the Minister of Justice thought fit to employ, when he reported that the provincial legislature had exercised its power, in "flagrant violation of private rights and natural justice."

17. In giving effect to the report of the Minister of Justice, the Dominion Government has disregarded provincial rights of legislation, clearly and solemnly defined and settled by the Order in Council of the 9th June, 1868. The attempt of the Dominion Government to review the provisions of an Act, passed by the provincial legislature on a subject within its competency under the British North America Act, was a wrongful interference with the constitutional rights of self-government possessed by each province.



18. The British North America Act shows that, while the different provinces were federally united in one dominion, with constitutions similar in principle to the British, the respective executive legislative powers and authorities of the provincial and Dominion governments were also defined and dealt with, as alike sovereign in their nature, within the limits of the subjects assigned to each respectively.

The Confederation Act was intended to give practical effect to the exercise of the fullest freedom in the administration and control in local matters within each province, which was the main object of Quebec and Ontario, especially, in seeking such union. This fundamental principle of local self-government runs through the whole of this constitutional Act, and in order that it may be preserved intact, the utmost vigilance on the part of every province should be constantly alive to every attempt of the central government to transfer the control of local affairs from the government having the greatest interest in them, and possessing the fullest knowledge of them, and under a direct responsibility to the people of the province, to a government which necessarily has the least knowledge of, and the smallest interest in, such matters.

19. Not only has the government of the Dominion transgressed the constitutional rights of the province in disallowing an Act within the competency of the province, but the recent decision of the Court of Appeal of Ontario, overruling that of the vice-chancellor, removes whatever colour might have existed for Mr. McLaren's exclusive pretensions, and leaves the objection of the Minister of Justice without support.

20. The Court of Appeal of Ontario, on the 8th July instant, determined that the legal rights claimed by Mr. McLaren did not exist, and in effect that, if the rule of the common law was not in itself sufficient to establish this public easement, such was the proper construction of previous legislation, and that all rivers, creeks and streams in this province were properly *publici juris*, for the transmission of timber and saw-logs, with the like incidents as highways or other easements, in which the public possessed an interest.

21. The decision of the Court of Appeal recognizes the paramount importance of these principles in fostering the lumbering interests, in which the province, as well as the manufacturer, is pecuniarily interested, and by which the general public of the province are largely benefited.

22. Whatever may be the ultimate determination of any tribunal on the legal question, the whole subject-matter was, and is, within the competency of the legislature of Ontario; and in any doubt as to the law affecting the relative rights of the province, proprietors and general public, with respect to easements of a public nature, the whole course of legislation, imperial, Canadian and colonial, justified the legislature of Ontario in dealing with the question as it has done.

23. The undersigned is unable to find, in the numerous Acts which have been passed since confederation by the different provinces, and which, under the procedure so definitely settled by the Order in Council of the 9th June, 1868, have all been considered and reported upon by the Minister of Justice for the time being, to the Governor General in Council, that any one of them has been reported for disallowance upon such ground as was taken by the Minister of Justice in this case, or upon any other objections than those defined by the Order in Council of the 9th of June, 1868.

24. The reserved bill cited by the Minister of Justice from Prince Edward Island, comes within a different principle, expressly provided for by the confederation Act, under which it is strictly constitutional having regard to the principles of responsible government, that the Lieutenant-Governor, one branch of the provincial legislature, may, with the advice and consent of the Executive Council, invoke the authority of the Governor General, and if the circumstances show the bill to be objectionable to Dominion policy, assent to it may properly be refused. Without the assent of the Lieutenant-Governor the bill is not the Act of the legislature, of which he forms an essential part.

25. There are many illustrations which show that the disallowance of the Act in question was singular and exceptional. One of these is the Act regulating the estate of George J. Goodhue. (See ante, pp. 96-101). The objections argued in the petition against the Act were forwarded by the Lieutenant-Governor of Ontario to the Secretary of State, with his own observation that he regarded the prin-

ciple involved in the bill passed by the assembly as very objectionable and forming a dangerous precedent, but that, in the absence of instructions and on the advice of his council, he had given it his assent. In the report of the Minister of Justice (Sir John A. Macdonald), he refers to this act as petitioned against, "but as it is within the competence of the provincial legislature," recommends "that it should be left to its operation."

26. If it had not been for the further position taken by the Minister of Justice in his report, that the Dominion Government had not only the power, but that it devolved upon such government to see that the jurisdiction of the provincial legislature was not exercised retrospectively, in declaring that the law was, and is, different to that decided by the court, it would not have been necessary to observe, that it is one of the duties incumbent on all the legislatures, and repeatedly exercised by them, to enact laws which if deemed necessary in the public interest, should have a retroactive, as well as future operation. It is generally litigation or judicial decision which gives origin to such remedial legislation, and each legislature must be supreme in determining the extent of its interference, as well as the necessity for its action. There are numerous examples of such acts passed by the Imperial Parliament and by colonial and other legislatures, as well in cases of litigation pending, as when there has been a judicial decision to the contrary.

27. When the Minister of Justice states in his report that the power of a provincial legislature to enact such a law is "exceedingly doubtful," he has assumed a grave responsibility, for he is the first minister who has ventured upon such a proposition, and that, too without submitting any general grounds for an opinion which, if there was any foundation for it, would so seriously affect provincial autonomy. The minister, however, stands alone in his doubt, and his report contains the first official expression of this, which has emanated from any source. The contrary view has been taken and uniformly acted upon by the Dominion Government since confederation till now, and numerous examples exist to show that the present premier of the Dominion, when Minister of Justice, proceeded upon a directly opposite conclusion, and unequivocally recognized the supreme legislative authority of the provincial legislature, in all subjects within its jurisdiction, notwithstanding its Acts had declared the law to be other than was decided by a court, or interfered with pending litigation, or had been retroactive. For instance in the first four years of confederation (not to refer to subsequent years also) there are to be found the Ontario Acts "Concerning Sheriff's sales of taxes," respecting the estate of Sir Henry Smith, "The Goodhue Will," and the numerous acts legalizing invalid municipal by-laws, all of which were left to their operation, notwithstanding the objections thereto. A notable example is the Act passed in 1871, and introduced by Mr. Sanfield Macdonald's government, for the express purpose of relieving the same Peter McLaren (the claimant here) and others from the decision of the Court of Common Pleas in Easter Term, 1870, in the suit of the Corporation of the Township of Barrie against John Gills and Peter McLaren, defendants, for cutting timber as the licensees of the crown on the government road allowances, which the court held the licensees had no right to do, against the possession and control of the municipality, contrary to the express decision of the court that the timber or road allowances could not be taken as timber or ungranted lands of the crown. Nevertheless, the first section of this Act declared and enacted that, "Every government road allowance included in any crown timber license heretofore granted, or which may hereafter be granted, &c., shall be deemed and taken to be and to have been *ungranted* lands of the crown, and liable, as such, to be included in such license." The second section declared the licensees have had all the right of cutting timber which the court had decided he had not in the case referred to.

28. Upon this review of the reasons which the Minister of Justice has been pleased to give for the disallowance of the Act in question, the undersigned respectfully submits that they fail to support his conclusion, in the particulars for which he has advanced them; but the constitutional objections to any recommendation for disallowance being open to the Minister of Justice, in any case within the provincial jurisdiction, are so decisive that it was scarcely necessary for the undersigned to have discussed such reasons except to show how unwarranted they were.



29. The undersigned considers that the harmony of the relations between the central and provincial governments, so essential to the beneficial working of the federal system, can only be preserved by confining the exercise of the power of disallowance by the Governor General in Council, to Acts objectionable as to their constitutional validity, or obnoxious to the laws or general interests of the Dominion, and that the Governor General in Council should not assume to review any of the provisions of a provincial Act within its competency, and thus wrongfully interfere with the responsibility of the provincial government and legislature to the people of the province, to whom alone they are subject, and not to the Dominion Government.

30. The undersigned therefore recommends that this government should respectfully assert and continue to assert, the responsibility and sovereign authority of the provincial legislature in considering, making and framing all such laws respecting property and civil rights within the province, and the other subjects exclusively assigned to it by the Confederation Act, as that legislature may think best for the welfare and good government of the province, subject to the British principle of constitutional responsibility to the people of the province, and free from any such revision or control by the Dominion Government, as has been improperly exercised by the disallowance of this Act for protecting the public interests, streams and creeks, within the jurisdiction of Ontario, and that this report be approved of, and forwarded by your Honour to the Secretary of State, for the information of the Government of the Dominion.

Respectfully submitted,

ADAM CROOKS,

*Attorney-General, pro tempore.*

ATTORNEY-GENERAL'S DEPARTMENT,  
TORONTO, 12th July, 1881.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on 3rd April, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th January, 1882.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report, with respect to the Acts passed by the legislature of the province of Ontario, in the year 1881, as follows :—

The undersigned recommends that the power of disallowance be not exercised with respect to chapters 1 to 4, 6 to 10, 12 to 26, 28 to 37, 39 to 56, 58 to 96, all inclusive.

Chap. 5. An Act to consolidate the Superior Courts, establish a uniform system of Pleading and Practice, and make further provision for the due Administration of Justice. While recommending that the power of disallowance be not exercised with respect to this Act, the undersigned desires to point out that that there are provisions in it which appear to him *ultra vires* of the provincial legislature. Among others, the following may be mentioned :—

1. The Act in effect assumes not only to constitute courts, but to appoint the judges of the courts, the appointment of whom, by the British North America Act, is vested in your Excellency. The Act unites and consolidates together, under the name of the Supreme Court of Judicature for Ontario, the previously existing Courts of Appeal, Queen's Bench, Chancery, and Common Pleas, and it divides the Supreme Court into two permanent divisions, one to be called the Court of Appeal for Ontario, the other the High Court of Justice for Ontario. The Act then declares in effect that the judges of the previously existing courts shall be judges in the new courts.

As the undersigned was of opinion that the legislature, in assuming to declare who should be judges in the courts, exceeded its legislative authority, he advises your Excellency to issue to the respective judges, the necessary commissions under the great seal of Canada. These commissions have been issued and the authority of the judges thereby been placed beyond question.



2. Section 43 provides as follows:—

“No appeal shall lie to the Supreme Court of Canada without the special leave of such court or of the Court of Appeal, unless the title to real estate or some interest therein, or the validity of a patent is affected; or unless the matter in controversy on the appeal exceeds the sum or value of \$1,000, exclusive of costs; or unless the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or a public nature affecting future rights.”

The undersigned thinks the power of a provincial legislature to pass such an enactment is very doubtful. It is to be observed however, that any person aggrieved thereby has an easy mode of testing the question.

3. Section 63 provides that the judges of the county courts shall be official referees for the trial of such questions as shall be directed to be tried, and section 64 provides that when there is no local master of the court at the commencement of the Act, or when a vacancy occurs in the office of local master, the judge of the county court for the county shall be the local master, until and unless another person be appointed. As referees or as local masters, the county judges may receive fees.

The undersigned thinks it doubtful whether the provincial legislature can constitutionally in this manner appoint judges, who hold office by commission from your Excellency, to other offices under the provincial government. The expediency of allowing county judges to act as referees and local masters is questionable, and the same may at some future time require the consideration of Parliament. Should Parliament think proper to legislate upon the subject, it is evident that the provisions last referred to of the Act now under consideration, would become inoperative.

4. The Act vests in the judges of the county courts certain jurisdiction in actions in the high court, and section 76 provides that the judges of the several county courts shall be judges of the high court for the purposes of their jurisdiction in actions in the high court, and the exercises of such jurisdiction may be styled local judges of the high court. The power of the legislature to appoint the county court judges to be local judges of the high court, even for the limited purpose mentioned in the Act, is doubtful. Some of the county court judges have refused to act unless appointed by commission from your Excellency.

The undersigned has already advised your Excellency to issue commissions to the several county court judges, appointing them to be local judges of the high court for the purposes of the Act. These commissions will, it is thought, remove any doubts as to their right to act.

5. Section 79 empowers the Lieutenant-Governor in Council, with the consent of any county court or surrogate judge, to commute the fees payable to him under the Surrogate Courts Act, for a fixed annual sum, and authorizes the Lieutenant-Governor in Council, in certain events, to pay to the junior judge of the county, a sum not exceeding \$666 per annum.

“The British North America Act,” section 96, empowers the Governor General to appoint the judges of the superior, district and county courts in each province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

The exception made by this section indicates that the Courts of Probate in Nova Scotia and New Brunswick would come within the meaning of the words “Superior, District and County Courts” in the province, and there seems no reason why those words should not include the Surrogate Courts of the Province of Ontario.

The 100th section of the British North America Act provides that the salaries, allowances and pensions of the judges of the Superior, District and County Courts, except the Courts of Probate in Nova Scotia and New Brunswick, shall be fixed and provided by the Parliament of Canada. The right of the provincial legislature to make the provision contained in the 79th section of the Act now under consideration is doubtful, but inasmuch as enactments relating to fees of the surrogate judges have been allowed to go into operation in Ontario, and have been in operation for some years, the undersigned does not think it necessary to do more than call attention to the doubt which exists as to the power of the legislature to pass the enactments.

The undersigned recommends that the attention of the Lieutenant Governor be called to these remarks.

Chap. 11. An Act for protecting the public interest in Rivers, Streams and Creeks.

This Act has already been disallowed by order of your Excellency in Council, dated 21st May, 1881. (*See pp. 177 and 178 ante.*)

Chap. 27. An Act to give increased efficiency to the Laws against Illicit Selling.

The undersigned recommends that power of disallowance be not exercised with respect to this Act, but in doing so he desires to observe that some of the provisions of the Act may be held to be *ultra vires*, as an interference with the regulation of trade and commerce. Inasmuch, however, as the precise powers of the Parliament of Canada and provincial legislatures, respectively, over the subject-matter, has not yet been defined, and as similar legislation has on previous occasions been allowed to pass into operation, the undersigned does not think it necessary to recommend any interference with the Act.

Chap. 28. An Act to prevent the spread of Yellows among Peach, Nectarine and other Trees.

Chap. 29. An Act to amend the Act for the protection of Insectivorous and other Birds beneficial to Agriculture.

Chap. 30. An Act for further improving the School Law.

Chap. 31. An Act respecting the University and Colleges at Toronto.

Chap. 38. An Act to close part of a certain Road Allowance between the Township of Kingston and the Village of Portsmouth.

The municipal council of the village of Portsmouth and the county council of the county of Frontenac have petitioned for the disallowance of this Act, on the ground, in effect, that the road to be opened by the Ontario Government, in lieu of the road which the Act authorizes to be closed, will not be so convenient for the inhabitants of the village as the present road. Objection is also taken to the power of the provincial legislature to provide for the closing up of the road. The undersigned thinks that the legislature has power to pass the enactment, and he sees no reason to recommend the exercise of the power of disallowance on the ground mentioned in the petition. He therefore recommends that the power of disallowance be not exercised with respect to this Act.

Chap. 57. An act to amend the Acts incorporating the Toronto Gravel Road and Concrete Company.

This Act forms the subject of a separate report.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor in Council on the 6th March, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd March, 1882.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report respecting an Act passed by the legislature of Ontario in the year 1881 (chap. 57), intituled : "An Act to amend the Acts incorporating the Toronto Gravel Road and Concrete Company."

Application for the disallowance of this Act was made by the company and by certain property holders, who claim that their interests were prejudicially affected by the provisions of the Act.

The undersigned was attended by counsel for those petitioning for the disallowance, as well as for those opposed to the disallowance, and the various questions involved were fully argued before him.

After a full consideration of the matter, the undersigned is of opinion that the power of disallowance should not be exercised with respect to the Act, and he therefore recommends that it be left to its operation.

A. CAMPBELL,  
*Minister of Justice.*

## ONTARIO, 45TH VICTORIA, 1882.

### 3RD SESSION—4TH LEGISLATURE.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 20th September, 1882.*

On a report dated 28th April, 1882, from the Minister of Justice, with respect to an Act passed by the legislature of the province of Ontario, at its last session (chapter 14), intituled: "An Act for Protecting the Public Interest in Rivers, Streams and Creeks;"

The minister states that in the session of the same legislature held in the year 1881 an Act similar in every respect was passed, and on the 19th day of May, 1881, such Act was disallowed by order of your Excellency in Council.

The minister recommends, that inasmuch as the Act passed at the last session of the legislature is in every respect the same as that of the previous session, it be disallowed.

The committee advise that the Act be disallowed accordingly.

JOHN J. MCGEE,  
*Clerk Privy Council.*

NOTE.—The report of the Minister of Justice upon which the above Order in Council was based, has been mislaid, and cannot be found. The substance of it has, however, been embodied in the above Order in Council.

*[Proclamation disallowing the Act above mentioned, published in the Canada Gazette on the 20th day of September, 1882. Vol. XVI., No. 9, p. 374.]*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th March, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 12th February, 1883.

*To His Excellency the Governor General in Council:*

Having had under consideration the Acts passed by the legislature of Ontario in the session of 1882, the undersigned observes:

1. That by section 4, chapter 10, "An Act for the removal of certain defects in the Law of Evidence," it is provided that parties to any proceeding instituted in consequence of adultery, and the husbands and wives of such parties, shall be competent to give evidence in such proceeding.

This provision should be limited to civil proceedings instituted in consequence of adultery.

2. By chapter 12, "An Act respecting the Restitution of Stolen Goods," it is provided that in case the counsel for the crown intimates that the crown does not intend to proceed upon any charge in respect of the property so found in the prisoner's possession, the judge before whom the prisoner was convicted, may, upon the application of the prosecutor or of any other person claiming the property, summarily try, at the same sitting of the court or at any subsequent time, the right of the prisoner and of the claimant to the said property, &c. As the judge would probably, in most cases, have to



find the prisoner guilty of a crime, before ordering restitution, the authority of the legislature to pass this Act is not free from doubt.

3. By the seventh subsection of the second section of chapter 17, "An Act to confer additional powers upon Joint Stock Companies," it is provided that where no special arrangement is made in regard to the rate of interest to be allowed on deposits, the rate shall be 3 per cent.

Provisions relating to interest are found in several other Acts of the session. By chapters 39 (s. 4), 41 (s. 4), 48 (s. 4) and 53 (s. 3), the several corporations to which the Acts relate, are authorized to issue debentures to bear interest at a rate not exceeding 6 per cent.

By chapters 50 (s. 17) and 74 (s. 2), authority is given to pay any rate of interest deemed advisable. The legislature having authority to authorize the issue of debentures, it would follow probably, that the corporations could issue them bearing any lawful rate of interest the corporations deemed advisable.

It might well be that the legislature would not authorize the issue of debentures unless a limitation was placed upon the rate of interest, and that it has authority to declare this limitation within lawful rates. But it is submitted that it has no power either to fix a rate where no contract exists, or to fix a rate in excess of the lawful rate. To test the respective powers of Parliament and the legislature in this respect, regard must be had to what Parliament may do, as well as to what it has done. Parliament could, if it thought best so to do, declare that no greater rate of interest than 5 per cent could be taken or given. If that were done all the Acts referred to would be objectionable.

Before leaving chapter 17 it is proper to observe that the propriety of the legislature enacting, as is done in the 13th section, that an offender, "besides being subject to such criminal punishments as is authorized for his offence," shall be civilly liable, is at least doubtful.

#### 4. Chapter 13, "An Act to amend the Municipal Act."

By section 12 authority is given to the councils of cities, towns and incorporated villages, to pass by-laws for appointing inspectors and providing for the inspection of milk, meat, poultry, fish and other natural products offered for sale for human food or drink, whether on the streets, or in public places, or in shops.

Those provisions to some extent conflict with the powers of Parliament to legislate in regard to the regulation of trade and commerce. Parliament has already legislated in regard to the inspection of certain articles mentioned in this section (sec. 37 Vic., chap. 45).

5. By sec. 15, chap. 50, "An Act to incorporate the Galt Junction Railway Company," it is provided that aliens as well as British subjects and whether resident in this province or elsewhere may be shareholders in this company. The same provision is found in the following Acts now under consideration, viz.:—Chaps. 52 (sec. 15), 57 (sec. 12), 58 (sec. 12), 60 (sec. 21) 67 (sec. 10) and 69 (sec. 13).

This provision is not objectionable in itself, but only in respect of the fact that it is legislation in regard to aliens. It purports to affect their status and to remove a disability. For similar legislation by Parliament, see 44 Vic., chap. 13, not yet brought into force. It should be observed, however, that Acts containing provisions similar to those found in sec. 15 of chap. 50 referred to, have been allowed to go into operation without comment. Neither is there, in the opinion of the undersigned, any objection to leaving them, as well as the other Acts referred to, to be dealt with by the courts.

It is therefore recommended that in case these observations are approved of, they be communicated to the Lieutenant-Governor of Ontario for the information of his government, and for such action as they shall think proper.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th March, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th February, 1883.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Acts of the legislature of Ontario, passed in the session of 1882, begs leave to report thereon.

Chap 14. An Act for protecting the Public Interest in Rivers, Streams and Creeks, was disallowed by Order in Council, passed on the 20th day of September last.

Chap. 87. An Act respecting St. Paul's Church in the Town of Woodstock, is reserved for a separate report.

It is recommended that the remaining Acts, chapters 1 to 13, 15 to 86, 88 and 89, be left to their operation; but in making this recommendation the undersigned has the honour to submit for consideration, a separate report in regard to several of the said Acts.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th March, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th February, 1883.

*To His Excellency the Governor General in Council :*

The undersigned, having had under consideration the petition of the churchwardens of St. Paul's Church, Woodstock, Ontario, praying that an Act of the Ontario legislature, passed in the session of 1882, respecting the church, be disallowed, begs to report as follows :—

The Act in question is chapter 87, intituled : "An Act respecting St. Paul's Church in the town of Woodstock."

The grounds of objection taken by the churchwardens are as follows, viz. :—

1. "Because the said Act is *ultra vires* the legislature of Ontario, inasmuch as the Dominion Parliament has control of all endowments on property granted under such patents.

2. "The recital or preamble of the said Act is incorrectly set forth in describing the patent dated 16th January, 1836.

3. "The said Act recites : 'And whereas there has been commenced an action in the Chancery division of the High Court of Justice against the incorporated Synod of the Diocese of Huron, in which the boundaries of the said rectory are called in question,' thereupon the said Act interfered with parties engaged in litigation, and while such litigation was still *sub judice*, as the following extracts from the said Act show :

" 'The limits of the said parish or rectory created by the said 'patent are hereby defined to have always been,' &c., and shall be so held to be, and have been in the said Act," is contrary to sound principles of legislation, because it is *ex post facto* in operation.

The undersigned has no doubt that the Act is within the legislative authority, and it is only necessary for him to consider the grounds of expediency raised by the petitioners, and while he is of opinion the Act is objectionable in two points, namely :—

That it was passed while the matter was under the consideration of the court, and (2) because it is *ex post facto* in its operation. In the preamble of the Act there is the following recital :—

"Whereas the matter of the said petition came on to be heard before a committee of the said assembly, duly constituted in that behalf, when all parties interested in the

said matter were heard before the said committee, and it was then agreed before the said committee by all the said parties, that on the consent of the Lord Bishop of Huron being given to such petition, all opposition should be withdrawn to any subsequent legislation necessary to effect that purpose ; and whereas there has been commenced an action in the chancery division of the High Court of Justice against the incorporated Synod of of the Diocese of Huron, in which the boundaries of the said rectory are called in question ; and whereas the Lord Bishop of Huron has, in writing, assented to the said limits being so defined, and the said rector, vestry and churchwardens have again petitioned to have the said boundaries so defined, and that the Act so to be passed shall apply to the said suit, and it is expedient to grant the prayer of such petition."

As against that recital, it is alleged in the petition to the legislative assembly of Ontario, attached to the petition now under consideration, that—

"Contrary to the spirit of the agreement come to before the Private Bills Committee, the promoters of the bill procured his Lordship's assent to the procuring of legislation defining the limits of the said rectory, without properly representing the matters in dispute to his Lordship, prior to his assenting to the proposed legislation."

There is nothing from the Lord Bishop of Huron corroborating this, or showing that he consented to the limits as established by this Act, in ignorance of the real rights of all the parties.

In view of these facts, the undersigned recommends that the Act be left to its operation, but that a copy of the papers be transmitted to the Lieutenant-Governor of the province of Ontario for the consideration of his government.

In addition to the papers referred from council in this matter, duplicates of the same papers have been transmitted to the undersigned direct, and he sends herewith these duplicates, as well as those referred to council, so that, if this report be approved, one set of the papers may be forwarded to the Lieutenant-Governor.

A. CAMPBELL,  
*Minister of Justice.*



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## ONTARIO, 46TH VICTORIA, 1882-83.

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4TH SESSION—4TH LEGISLATURE.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th March, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th March, 1883.

*To His Excellency the Governor General in Council :*

The Minister of Justice has the honour to report to your Excellency in Council, that amongst the Acts of the legislature of the province of Ontario, passed at its last session, there is one (chap. 10) entitled : "An Act to protect the public interests in Rivers, Streams and Creeks." The Act is a transcript of one passed under the same title in the session of 1882, and of another passed in the preceding session of 1881, both of which have been disallowed by order of your Excellency in Council.

The undersigned has the honour to recommend that inasmuch as the Act herein-before first referred to is, in every respect, the same as those of the previous sessions, it be disallowed.

All of which is respectfully submitted.

A. CAMPBELL,  
*Minister of Justice.*

[*Proclamation disallowing the Act above mentioned published in Canada Gazette on the 16th day of March, 1883. Vol. XVI., No. 37, p. 1532.*]

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 2nd June, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th March, 1884.

*To His Excellency the Governor General in Council :*

The undersigned begs leave to submit his report on the Acts passed by the legislature of the province of Ontario in the session held in the year 1882-83.

Chap. 10. An Act for protecting the Public Interests in Rivers, Streams and Creeks, was disallowed by Order in Council on the 16th March, 1883.

Chap. 17. An Act to amend the Act respecting Market Fees. A letter was received from Mr. F. A. Knapp, Prescott, complaining that the provisions of this Act declaring that municipalities shall have the power to sell, assign or lease its market fees, were declared to have been operative from the 1st day of April, 1882, and that by reason of this an action to quash a by-law of the town of Prescott had been interfered with.

In the opinion of the undersigned the Act is clearly within the legislative authority, and he recommends that it be left to its operation.

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Chap. 18. An Act to consolidate the Acts respecting Municipal Institutions.

This Act is, for the most part, a consolidation of the existing law. In it, however, as in other Acts of the same class, are some provisions relating to the powers of councils to pass by-laws as to which it is at least doubtful whether the legislature has not exceeded its powers.

Some of the provisions relating to harbours (s. 482) and to public morals (s. 490) afford instances of the class of provisions referred to. The Acts containing these provisions have, however, in the past been left to their operation, and the undersigned recommends that the power of disallowance be not exercised with respect to this Act.

Having carefully considered the remaining Acts, chapters 1 to 9, 11 to 16, 19 to 72 all inclusive, the undersigned recommends that they be left to their operation.

A. CAMPBELL,  
*Minister of Justice.*

## ONTARIO, 47TH VICTORIA, 1884.

1ST SESSION—5TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 30th April, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th April, 1884.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has had under consideration an Act passed at the last session of the legislature of Ontario, chaptered 35, intituled : "An Act respecting License Duties."

In the preamble, after reciting the passing of the "Liquor License Act, 1883," of Canada, with special reference to the 2nd subsections of the 7th, and of the 40th sections thereof, the contention of Ontario is stated to be, that the legislature of the province has exclusive authority to legislate with respect to liquor licenses and the sale of spirituous and fermented liquors, and to regulate the sale thereof, and the houses in which the same shall be sold. It is then further recited, that apart from "The Liquor License Act, 1883," the authority to impose duties upon shop, saloon, tavern and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes, is vested in the legislatures of the provinces by "The British North America Act," and that should "The Liquor License Act, 1883," notwithstanding "the contention of the province of Ontario, be held to be valid, it becomes necessary, in order to the raising of a revenue for provincial, local or municipal purposes, that a duty be imposed upon the 'licenses' which may be issued under the last mentioned Act."

The first section of the Act prescribes the duties to be paid in respect of the several classes of licenses mentioned in "The Liquor License Act, 1883"; the second section provides for the payment of these duties to license inspectors appointed under the Ontario Liquor License Act, or where there is no inspector, into a chartered bank; the third section for the application of the revenue to be derived from the duties imposed upon the licenses; and the fourth for municipalities increasing the duties to be levied upon such licenses.

By the fifth section it is then enacted that "the duties upon, or in respect of licenses by this Act made payable, are not, nor is any part thereof the same, or identical with the duties payable upon or in respect of licenses under the Liquor License Act of Ontario, or in any amendment thereunto."

The sixth and seventh sections make very stringent provisions for the collection of the duty, in case the license issues without payment thereof.

The eighth, ninth and tenth sections define certain terms used in the Act, and the eleventh is a declaration that nothing in the Act is to be taken as an admission of the validity of "The Liquor License Act, 1883," or an adoption or enactment thereof under section 94 of "The British North America Act."

If the undersigned could come to the conclusion that the Act under consideration was passed with the single object of raising a revenue from licenses issued under the provisions of "The Liquor License Act, 1883," he would see no reason for its disallowance.

It is to be observed, however, that by the Revised Statutes of Ontario, chapter 181, as amended by 44th Victoria, chapter 28, and 47th Victoria, chapter 34, provision is made for raising a revenue from liquor licenses. The tariff by these Acts established, may fairly be taken as, in the opinion of the legislature of Ontario, sufficient for revenue purposes.



The Dominion Liquor License Act of 1883 recognizes the duties so imposed, and no license under the latter Act can be issued without payment thereof.

While the decision of the Judicial Committee in the case of *Hodge vs. The Queen* has established the validity of the Ontario Acts, as police or municipal regulations, no decision has been obtained as to the competency of the Parliament of Canada to enact "The Liquor License Act, 1883," or with respect to the validity of the Ontario License Acts, in view of the general laws enacted by Parliament. There has been, and there is no disposition on the part of Parliament or of the Government of Canada to do more than seek, in a legal or constitutional way, a settlement of the questions arising from the conflict between Dominion and provincial legislation.

This is evident from the fact that, while the Act under discussion was assented to on the twenty-fifth day of March last, the House of Commons on the eighteenth day of that month, by resolution, declared that it was expedient "that the question of the competency of Parliament to pass the 'Liquor License Act, 1883,' should be submitted, with all convenient speed, to the Supreme Court of Canada, or to the Judicial Committee of the Privy Council, or to both."

The real object of the Act under consideration is, in the opinion of the undersigned, disclosed by the fifth section above recited, by which the duties payable in respect of licenses issued under the Dominion Act are declared not to be the same "or identical with the duties payable upon or in respect of licenses under the Liquor License Act of Ontario, or any amendments thereunto," and are, therefore, cumulative thereto.

Apparently the real object aimed at in this provision, is, if possible, to make the "Liquor License Act, 1883," inoperative, by imposing a heavy and cumulative tax on persons taking out licenses under it, pending the settlement of the questions, arising from the conflict of legislation referred to.

From this additional and unnecessary tax, it is the duty of the government to protect those who obey the laws enacted by Parliament, and the only effective means of accomplishing this, is to disallow the Act under consideration.

The undersigned, therefore, respectfully recommends that the Act of the legislature of Ontario, passed during the session of 1884, chaptered 35, and intituled: "An Act respecting License Duties," be disallowed.

A. CAMPBELL,  
*Minister of Justice.*

[Proclamation disallowing the above mentioned Act published in the Canada Gazette on the 2nd day of May, 1884. Vol. XVII., No. 44, p. 1730.]

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 9th February, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th January, 1885.

*Ta His Excellency the Governor General in Council:*

The undersigned, to whom was referred the despatch of the 24th October last from the Lieutenant Governor of Ontario to the Secretary of State, calling attention to chapter 39, intituled: "The Ontario Factories Act, 1884," and suggesting that the question, as to whether the Act is within competence of the legislature of Ontario, be referred to the Supreme Court for decision, begs leave to report:—

That having considered the Act carefully, he does not propose to recommend any executive interference in respect thereto, but that the Act be allowed to take its course. He does not, however, think it advisable to refer the question of the authority of the legislature to pass the Act, to the Supreme Court, but that it would be better to leave the Act to be tested in the ordinary way, and by the ordinary tribunals of the country.

If this report is approved of, the undersigned respectfully recommends that the substance of it be communicated to the Lieutenant-Governor of Ontario.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 20th April, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th April, 1885.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the Acts passed by the legislature of the province of Ontario during the session of 1884.

Having carefully considered the Acts mentioned in the schedule hereto (chapters 1 to 31 inclusive, 33, 36 to 38, and 40 to 97 inclusive) the undersigned respectfully recommends that they be left to their operation.

Cap. 32. The Municipal Amendment Act, 1884.

By the 12th section of this Act power is given to the council of every city, town and incorporated village to pass by-laws—

“For regulating and compelling the removal from any public wharf, dock, slip, drain, sewer, shore, bay, river, harbour or water, of all sunken, grounded or wrecked vessels, barges, craft, cribs, rafts, logs or other obstructions or encumbrances, by the owner, charterer or person in charge, or any other person who ought to remove the same.”

By the Act of Parliament, 37th Vic., cap. 29, as amended by 43rd Vic., cap. 30, the Minister of Marine and Fisheries may, with the authority of the Governor in Council, remove or destroy any obstruction caused by the wreck, sinking, lying ashore or grounding of any vessel in any river, lake, bay, creek, harbour, or other navigable water over which the jurisdiction of Parliament extends, and by “The British North America Act, 1867,” the Parliament of Canada has exclusive legislative authority in respect of navigation and shipping. So far, therefore, as the power is to be exercised in navigable waters, it is one, in the opinion of the undersigned, to be exercised by virtue of the authority of the Parliament of Canada, and not of the legislature of a province. As, however, “The Municipal Act, 1884,” contains other important provisions within the legislative authority of the legislature, the undersigned recommends that it be left to its operation, but that the attention of the Lieutenant-Governor be called to the provisions of the 12th section.

Cap. 34. An Act to improve the Liquor License Laws.

As the question of the relative powers of Parliament and the legislature over this subject is still unsettled, the undersigned recommends that the power of disallowance be not exercised in respect of this Act.

Cap. 35. An Act respecting License Duties.

This Act was disallowed on the 30th day of April, 1884. (*See pp. 194 and 195 ante.*)

Cap. 39. An Act for the protection of persons employed in Factories.

In an approved report of the 20th day of January last, the undersigned stated, that having carefully considered this Act he had come to the conclusion that it should be left to its operation.

A. CAMPBELL,  
*Minister of Justice.*

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ONTARIO, 48TH VICTORIA, 1885.

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2ND SESSION—5TH LEGISLATURE.

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*The Secretary of State to the Lieutenant Governor.*

DEPARTMENT OF STATE, OTTAWA, 16th May, 1885.

SIR,—I have the honour to transmit to you herewith in order that you may be pleased to obtain the views of your government upon the same, a copy of a communication addressed to the Honourable the Minister of Justice by Messrs. Walker & Scott, of the city of Hamilton, barristers-at-law, on the subject of a bill recently passed by the Legislative Assembly of the province of Ontario, entitled: "An Act in respect of certain sums of money ordered by the Legislative Assembly to be impounded in the hands of the Speaker."

I have, &c.,

J. A. CHAPLEAU,  
*Secretary of State.*

*Messrs. Walker & Scott to Minister of Justice.*

10, JAMES STREET SOUTH, HAMILTON, ONT., 14th April, 1885.

DEAR SIR,—We desire to call your attention to a bill recently passed by Legislative Assembly of the province of Ontario, entitled: "An Act in respect of certain sums of money ordered by the Legislative Assembly to be impounded in the hands of the Speaker." We inclose a copy of the bill as assented to. When the \$1,000 referred to was handed by McKim to the Speaker and before the House took any action in the matter, we, on behalf of our clients, Messrs. Stuart & Macpherson, attached the money under the garnishee clauses of the Common Law Procedure Act. The court, the Common Pleas Division of the High Court of Justice, considered our claim to the money to be so well founded that it directed an issue to be tried, the form of which you will find with the decision arrived at by the court reported in the Canada Law Journal, vol. 21, p. 134. The issue was directed to be tried at the present assizes for the county of York, but in view of the possible passing of the bill we arranged with the Deputy Attorney General of this province that the trial should be postponed until the summer assizes for the county of York. We submit that your government should disallow this Act. It is a direct interference with private rights, if our clients have any. We believe our clients have a legal right to this money. We are offered evidence that it was paid to McKim for services performed by him, and if the Act be not disallowed we are deprived of even the privilege of trying our client's rights in the ordinary course of the courts of this province.

We hope you will give this communication your consideration, and if further information or evidence is required before the government can act, we shall be happy to supply it.

We have, &c.,

WALKER & SCOTT.



*Lieutenant Governor to Secretary of State.*

GOVERNMENT HOUSE, TORONTO, 1st June, 1885.

SIR,—Adverting to your despatch of 16th ultimo, forwarding a copy of a communication addressed to the Honourable the Minister of Justice by Messrs. Walker & Scott, of the City of Hamilton, barristers-at-law, on the subject of an Act recently passed by the Legislative Assembly of this province entitled; “An Act in respect of certain sums of money ordered by the Legislative Assembly to be impounded in the hands of the Speaker.” I have now the honour to inform you that in the view of my government, the Act referred to was and is a just measure, passed in the exercise of the undoubted legislative jurisdiction possessed by the province, and with full knowledge and after full consideration by the legislature of all the facts.

I have, &amp;c.,

J. B. ROBINSON,  
*Lieutenant-Governor of Ontario.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th March, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th February, 1886.

*To His Excellency the Governor General in Council :*

The undersigned having carefully considered the Acts mentioned in the schedule hereto (chapters 1 to 8, 10 to 12, 14 to 25, 27, 28, and 30 to 101 inclusive), has the honour respectfully to recommend that they be left to their operation.

By chapter 5, intituled: “An Act in respect of certain sums of money ordered by the Legislative Assembly to be impounded in the hands of the Speaker,” the sums of \$1,000 and \$800 in the preamble of the Act stated to have been delivered by a certain person to two members of the Legislative Assembly for the purpose and under the hope of thereby influencing their votes as members of the Legislative Assembly of Ontario were declared to be forfeited to Her Majesty for the public use of the province of Ontario, and to have been so forfeited from the time such sums of money were, by the members mentioned, delivered to the speaker of the assembly, and the Act was declared to be a bar and discharge of any action which had been taken or might thereafter be brought against the speaker by any person in respect of the said moneys or any part thereof.

It appears from a letter under date of the 14th April, 1885, from Messrs. Walker & Scott, of Hamilton, that, prior to the passing of the said Act they had for their clients, Messrs. Stuart and Macpherson, attached this money in the hands of the speaker of the assembly under the garnishee clauses of the Common Law Procedure Act. On the ground that the Act is a direct interference with the rights of their clients, Messrs. Walker & Scott ask that it be disallowed. A copy of their communication being transmitted to the Lieutenant-Governor of the province of Ontario, he, in a despatch under date 1st June, 1885, states, that in the view of his government, the Act referred to is a just measure, passed in the exercise of the undoubted legislative jurisdiction possessed by the province, and with full knowledge and after full consideration by the legislature of all the facts.

Without expressing any opinion as to whether the Act is a just measure or not, the undersigned is of opinion that it is within the undoubted legislative authority of the legislature of that province, and, therefore, respectfully recommends that it be left to its operation.

By chapter 9, “An Act to regulate the fisheries of this Province,” provision is made for the administration of fishing rights vested in the crown in the right of the province of Ontario.

By the 2nd section it is provided that the Act and its respective provisions apply to fisheries and rights of fishing in respect of which the legislature of Ontario has the right to legislate. Some amendments were, at the request of the Minister of Justice, made in the Act during its passage through the legislative assembly, and while it is possible that the administration of the Act may possibly lead to some conflict with the administration of the Fisheries Act of the Dominion, the undersigned is of opinion that the power of disallowance should not be exercised in respect of it, and, therefore, recommends that it be left to its operation.

By the 13th section of chapter 13, intituled: "An Act for further improving the administration of the Law," it is provided that the clerk of the crown of the court of Queen's Bench sitting at chambers, and the master in chambers, or any referee sitting for him, shall be held to have heretofore had, and in all matters of practice to have now, authority to do all such things, transact all such business and exercise all such authority and jurisdiction in respect of the same, as by virtue of any statute of custom, or by the rules and practice of any of the superior courts, were, at or before the time of the passing of the Ontario Judicature Act, 1881, or are now done, transacted or exercised by any judge of the High Court sitting at Chambers, with certain exemptions therein mentioned.

By the 21st section it is provided that the judge of the County Court, other than the county of York, and the local master of the Supreme Court of Ontario shall, in all actions brought to their county, have concurrent jurisdiction with, and the same power and authority, as, the master in chambers in all proceedings which are now determined at chambers in Toronto.

The undersigned appreciates the advantage of having matters of practice, so far as possible, disposed of by officers of the court without devolving this additional labour upon the judges. It is quite clear, however, that no one can be appointed judge of the High Court of Justice, except by commission from your Excellency, and it is not possible to constitute any one a judge of either a superior or a county court by a provincial statute.

It follows from this, the undersigned thinks, that the legislature cannot confer upon any person the powers of a judge. The difficulty, however, arises in determining how far the authority or jurisdiction professed to be given by these sections of the statute, and by other similar provisions of law, are such as belong to the judicial office.

The undersigned does not desire to do more than call attention to the provision, and respectfully recommends that the Act be left to its operation.

By chapter 26, intituled: "An Act respecting assignments for the benefit of Creditors," it is, amongst other things, provided that every gift, conveyance, assignment or transfer, delivery over, or payment of any property, real or personal, made by any person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, with intent to defeat, delay or prejudice his creditors, or to give to any one or more of them a preference over his other creditors, or over any one, or more of them, or which has such effect, shall as against them, be utterly void.

It is then provided that nothing in the provision mentioned shall apply to any assignment for the purpose of paying ratably and proportionately, and without preference or priority, all the creditors of the debtor.

Provision is also made for the appointment of assignees and for the administration of the estate where an assignment, for the general benefit of creditors, is made.

The Act, in substance, is an Act respecting the administration of the estates of insolvent persons, and it is, the undersigned thinks, more than doubtful whether it is within the legislative authority of the provincial legislature.

That question, the undersigned understands, is now pending in the courts, and can, he thinks, be more conveniently settled in that way than in any other.

He, therefore, respectfully recommends that the power of disallowance be not exercised in respect of this Act.

Chapter 29, "An Act respecting Wages," makes provision, among other things, for giving priority to persons in the employ of one who makes an assignment for the

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general benefit of creditors or of an execution debtor under "The Creditor's Relief Act, 1880." The validity of this provision, so far as it relates to assignments by a person in insolvent circumstances, probably depends upon the validity of the Act respecting assignments for the benefit of creditors, 48th Victoria, chapter 26, before referred to.

By the 5th section of 48th Victoria, chapter 29, it is provided that the Act shall not apply to assignments made under the provisions of any Act of the Parliament of Canada relating to, or respecting bankruptcy or insolvency.

For the reasons given in respect of chapter 27, the undersigned recommends that this Act be left to its operation.

All of which is respectfully submitted.

JOHN S. D. THOMPSON,  
*Minister of Justice.*



## ONTARIO, 49TH VICTORIA, 1886.

3RD SESSION—5TH LEGISLATURE.

*Under Secretary of State to Lieutenant-Governor.*

DEPARTMENT OF THE SECRETARY OF STATE, OTTAWA, 8th April, 1886.

SIR,—I have the honour to transmit to you, herewith, for the information of your government, copy of a communication received from Mr. Warren Totten, of the town of Woodstock, calling attention to section 59, subsection *b* of Bill No. 135, intituled: "An Act for further improving the law," introduced by the Honourable the Attorney General, and passed at the recent session of the Ontario legislature.

I have, &c.,

G. POWELL,  
*Under Secretary of State.*

*Mr. Warren Totten to Minister of Justice.*

WOODSTOCK, 25th March, 1886.

HON. SIR,—I beg to call your attention to section 59, subsection *b* of Bill No. 135, intituled: "An Act for further improving the law," introduced by the Attorney General, and passed by the recent sitting of the Ontario legislature, which assumes to give power to the High Court to relieve against all penalties. There are proceedings being had in this county against a police magistrate for not returning 20 convictions, the penalty for each of which is \$80. Out of this 20, 15 of them are for breaches which come within the provisions of the criminal law as enacted by the Dominion Parliament, the half of the penalty of which is payable to the Receiver General. It has occurred to me that the Bill No. 135, above referred to, has been enacted so as to found an argument before the High Court that the said Act gives the court power to relieve against penalties to which the Dominion Government are entitled to one-half. If such be the case, the Ontario legislature is seeking to legislate the Dominion Government out of a source of its revenue. It occurs to me that this is *ultra vires* of the local House, and I call your attention to the fact, with the view of your considering the question as to whether the provision should not be disallowed by your government.

I have, &c.,

WARREN TOTTEN.

*Lieutenant-Governor of Ontario to the Honourable the Secretary of State.*

GOVERNMENT HOUSE, TORONTO, 7th May, 1886.

SIR,—Adverting to your despatch of the 8th ultimo inclosing a copy of a communication received from Mr. Warren Totten, of the town of Woodstock, calling attention to section 59, subsection *b* of Bill 135, introduced by the Honourable the Attorney General, and passed at the recent session of the Ontario legislature, I

have the honour to state that I have been advised that the enactment to which Mr. Totten objects is section 6 of chapter 16 of 49 Victoria "for further improving the law" as passed; that like all other provincial enactments this provision necessarily applies only to matters within the jurisdiction of a provincial legislature and government, nor was it intended to have any operation in regard to any others; that the commissioners now engaged in revising the statutes of this province, seven of whom are judges, have, in consolidating, decided on striking these words out wherever they occur, the same being unnecessary and, therefore, in their opinion, not proper to be retained.

I have, &c,

J. B. ROBINSON,  
*Lieutenant-Governor of Ontario.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 15th March, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th March, 1887.

*To His Excellency the Governor General in Council :—*

The undersigned has the honour to report that he has had under consideration the Acts (chapters 1 to 95 inclusive) 1886.

No objection has been taken to any of the Acts referred to, except in one provision of chapter 16, intituled: "An Act for further improving the law," this objection is made by Mr. Totten, of Woodstock, in a communication dated the 25th of March, 1886, of which the following is a copy :—

"I beg to call your attention to section 59, subsection *b*, of Bill No. 135, intituled: 'An Act for further amending the law,' introduced by the Attorney General and passed by the recent sittings of the Ontario legislature, which assumes to give power to the High Court to relieve against all penalties. There are proceedings being had in this county against a police magistrate for not returning twenty convictions, the penalty for each of which is \$80. Out of this twenty, fifteen of them are for breaches which come within the provisions of the criminal law as enacted by the Dominion Parliament, the half of the penalty of which is payable to the Receiver General. It has occurred to me that the Bill No. 135, above referred to, has been enacted so as to found an argument before the High Court that the said Act gives the court power to relieve against penalties of which the Dominion Government are entitled to one-half. If such be the case, the Ontario legislature is seeking to legislate the Dominion Government out of a source of its revenue. It occurs to me that this is *ultra vires* of the local House, and I call your attention to the fact with the view of your considering the question as to whether the provision should not be disallowed by your government."

This communication having been transmitted to the Lieutenant-Governor of Ontario, he, by despatch dated 7th May, 1886, communicated to the Secretary of State the views of his advisers in the terms following :—

"Adverting to your despatch of the 8th ultimo, inclosing a copy of a communication received from Mr. Warren Totten, of the town of Woodstock, calling attention to section 59, subsection *b*, of Bill No. 135, introduced by the Honourable the Attorney General, and passed at the recent session of the Ontario legislature, I have the honour to state that I have been advised that the enactment to which Mr. Totten objects is section 6 of chapter 16, of 49 Victoria, "for further improving the law," as passed; that like all other provincial enactments this provision necessarily applies only to matters within the jurisdiction of a provincial legislature and government, nor was it intended to have any operation in regard to any others; that the commissioners now engaged in revising the statutes of this province, seven of whom

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are judges, have, in consolidating, decided on striking these words out wherever they occur, the same being unnecessary, and therefore, in their opinion, not proper to be retained."

The undersigned, not without some doubt as to the provision referred to, believes it to be paragraph (b) of sections 38 of 49 Victoria, chapter 16, which is as follows:—

"(Subject to appeal as in other cases) the High Court shall have power to relieve against all penalties, forfeitures and agreements for liquidated damages, and in granting such relief to impose such terms as to costs, expenses, damages, compensation and all other matters as the court thinks fit. The county courts and division courts shall have like power (subject to appeal) in regard to causes of action within their jurisdiction."

The undersigned concurs in the view that this provision applies only to matters within the jurisdiction of the provincial legislature, and for that reason sees no objection to the Act being left to its operation.

Having carefully considered the other Acts referred to, the undersigned is of opinion that they should be left to their operation, and respectfully recommends that the Lieutenant-Governor of Ontario be informed that it is not your Excellency's intention to exercise the power of disallowance in respect of any of the Acts passed by the legislature of the province of Ontario in the session held in the year 1886.

JNO. S. D. THOMPSON,  
*Minister of Justice.*



## ONTARIO, 50TH VICTORIA, 1887.

## 1ST SESSION—6TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th June, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st June, 1888.

*To His Excellency the Administrator in Council:*

The undersigned has the honour to recommend that all of the Acts (chapters 1 to 99 inclusive,) passed by the legislature of the province of Ontario in the year 1887, be left to their operation.

The under-signed thinks it to be his duty, however, to call attention to, and to make certain observations upon, the provisions of the following chapters, namely: 2, 8, 19, 36, 45, 76, 79 and 81.

Chap. 2. An Act respecting the Revised Statutes of Ontario.

This chapter gives effect to the last edition of the Revised Statutes of Ontario, and it is under its provisions that volume has the force of law.

In advising your Excellency to allow this chapter to go into operation, the undersigned wishes to state that he is not to be understood as expressing an opinion that all of the provisions of the Revised Statutes of Ontario are within the legislative authority of the legislature of that province, but inasmuch as the provisions of the Revised Statutes are in the main within such jurisdiction, and it is in the public interest that the Revised Statutes as a whole should have the force of law, and inasmuch also as the question of legislative competency may be brought up at any time, notwithstanding the fact that the right of disallowance has not been exercised, the undersigned does not consider that such power should be exercised, even if some of the Acts or portions of the Acts may be considered as *ultra vires* on the part of the legislature of Ontario.

Chap. 8. An Act to give early effect to certain amendments of the law recommended by the Statute Commissioners.

The undersigned desires to call attention to the provisions of this chapter, so far as it amends section 33 of chapter 90, of the Revised Statutes of Ontario (1st series), chapter 91, section 52 (present series).

This legislation assumes that, although the appointment of Superior, District and County Court judges in each province is, by "The British North America Act," vested in the Governor General, and that the only limitation imposed by that Act in the choice of your Excellency is, that judges of provincial courts in the original provinces of Canada must be selected from their respective bars; a provincial legislature has power to limit the choice of Your Excellency by such provisions and qualifications as it may seem proper.

The undersigned is of opinion that a provincial legislature has no such authority, and that the power of appointment to the Bench is absolute in your Excellency, subject only to the limitations prescribed by "The British North America Act."

The undersigned, however, does not deem this objection to chapter 8 to be a sufficient reason for advising your Excellency to exercise your power of disallowance in respect to it.

Chap. 19. An Act to make further provisions respecting assignments for the benefit of creditors.

In previous reports to your Excellency, attention has been called to the possibility of legislation of this character in respect of insolvency by a provincial legislature, being beyond its constitutional authority. The constitutionality of this Act is now undergoing discussion before the courts of Ontario, and pending a decision, the undersigned, although of the opinion that certain of the provisions of the Act, which chapter 19 is intended to amend, are beyond the scope of the legislature of Ontario, he does not advise your Excellency to exercise your power of disallowance in respect to it.\*

Chap. 36. An Act for the protection of Infant Children.

Section 6 of this Act is as follows :

"If any person shall make false representations with a view to being registered under this Act, or shall forge any certificate for the purpose of this Act, or make use of any forged certificate knowing it to be forged, or shall falsify any register kept in pursuance of this Act, he shall be guilty of an offence against this Act.

The undersigned is of opinion that this section, combined with section 12, is legislation in respect to the Criminal Law, and appears to be unnecessary and confusing, considering the provisions of chapter 165 of the Revised Statutes of Canada ("An Act respecting Forgery"), section 46.

The undersigned submits that, in order to avoid difficulty and confusion, the section quoted should be repealed. He does not, however, think, in view of the probable utility of the legislation, of which this section forms a part, that the whole Act should be disallowed.

Chap. 45. An Act for the Protection of Women in certain cases.

The undersigned assumes that it was intended by this Act to make it an offence to have carnal knowledge of any patient confined in an asylum, or of any prisoner confined in a prison in Ontario, even with her consent.

From the use of the word "unlawfully" in the 1st section, some doubt might arise as to that being the legal effect of the enactment.

In the judgment of the undersigned, legislation of this character approaches more nearly to that relating to the Criminal Law than to police regulations.

The undersigned, however, does not consider that any public interest calls for the exercise of the power of disallowance in respect of this enactment.

Chap. 76. An Act to incorporate the Fort Erie Ferry Railway Company.

Chap. 79. An Act to incorporate the Ottawa and Thousand Islands Railway Company.

Chap. 81. An Act to incorporate the Southern Central Railway Company.

The undersigned desires to call attention to section 4 of chapter 76, and section 55 of chapter 81, in which an attempt is made to give power to the companies by such sections to erect obstructions upon navigable waters.

The undersigned is of opinion that a provincial legislature does not possess any such power.

The undersigned would further call attention to the provisions of section 17 of chapter 76, section 19 of chapter 79, and section 13 of chapter 81, all of which sections purport to give to aliens as well as to British subjects, the right to hold shares in these companies.

Special legislation appears to be unnecessary, as aliens do not require statutory authority to hold stock in Canadian companies, but, assuming it to be necessary, the power of adopting such legislation is solely with the Dominion Parliament, under section 91 of subsection 25 of the British North America Act.

Notwithstanding, however, the objections expressed to the chapters in question, the undersigned is of opinion that the three Acts, to which reference has been made, may be left to their operation.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

\*See Re Assignment and Preferences Act, *Atty. Gen., Canada vs. Atty. Gen., Ont.*, 20 Ont. App. Rept., 489, and also L. R. A. pp. Cases (1894) 189.

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## ONTARIO—51ST VICTORIA, 1888.

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2ND SESSION—6TH LEGISLATURE.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th February, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, January 28th, 1889.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Acts (chapters 1, 3, 4, 6, 8, 9-13, 15-27, 30, 31, 33-47, 49-69, 72, 75-78, 80 and 93) of the legislature of the province of Ontario, passed in the session held in the year 1888 \* \* \* respectfully recommends that they be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*The Honourable the Minister of Justice to Honourable Attorney General Mowat.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th February, 1889.

DEAR SIR,—I desire to call your attention in an informal way, if you will permit me to do so, to chapter 5 of the Ontario Acts of last session, about the constitutionality of which I have been unable to satisfy myself.

Section 65 of "The British North America Act," as recited in the preamble of your statute, in effect, vests in the Lieutenant-Governor of Ontario all powers which, under any imperial statute or statutes of Canada, were, at the time of the union vested in the Governor or Lieutenant-Governor of Canada in so far as such powers can be exercised in relation to the Government of Ontario, subject to abolition or alteration by the legislature of Ontario, except as to such powers as existed under imperial Acts. I suppose that this section was designed to make applicable to the new provinces of Ontario and Quebec, the enactments which had conferred on the Government of Canada, powers which related to the matters which would be of provincial concern under the scheme of union. In all the provinces there were powers of that kind which were incapable of being exercised by the Governor General, and which were connected with the functions of the provincial executive, and related to those matters which were under the exclusive control of the provincial legislatures.

It seems to me, however, that while these powers may, of course, be abolished, and while they may be altered, as for example, by limitations being imposed upon them, or by being required to be exercised in a certain way, they cannot in any way be added to by a provincial enactment. The statute in question, therefore, seems to be open to objection on the following grounds :

(1.) The first section is practically a declaration of the meaning of section 65 of "The British North America Act," and I submit that it is not competent for a legislature, or for the Parliament of Canada to make any enactment declaring the meaning of that statute.



In so far as it is not declaratory of section 65 of "The British North America Act," it seems to me to be still further from constitutional lines, because it would clearly not be competent for the provincial legislature to add to section 65, by giving additional powers to those which are there given.

(2.) Section 1 of the chapter above referred to does in fact add to the powers which are given by section 65. The latter section gives the powers which the Governors of Canada had under imperial statutes and statutes of Upper Canada, Lower Canada and Canada, while the section under consideration undertakes to increase that gift of powers in the following particulars:—

(a.) It gives likewise all the powers which were vested in the Governor and Lieutenant-Governor, of any of the provinces now forming Canada.

(b.) It gives the powers which existed, not only under statutes, but under commissions, instructions or otherwise.

(3.) Section two seems open to still greater objection. It declares that the effect of section 65 is to confer on the Lieutenant-Governor of Ontario, the power of committing and remitting sentences for offences against the laws of the province, or for offences over which the legislative authority extends.

I submit that the powers mentioned in this section are not powers "capable of being exercised after the union in relation to the Government of Ontario."

The royal prerogative of mercy seems to me to be entrusted only to the Governor General. It is undoubtedly vested in Her Majesty, and by Her Majesty has been entrusted to no one but Her Majesty's immediate representative in Canada.

This seems to me to be the case even as regards offences which are created by provincial legislation, but section 2, of Act under consideration not only declares that the Lieutenant-Governor of Ontario may commute or remit sentences for offences against the laws of Ontario, but also sentences for offences over which the legislature might have legislated.

The division of powers, in relation to crimes and offences, between the provincial and federal parliaments is, I think you will admit, very difficult to trace in very many places. The provincial legislature has power to impose fine, penalty and imprisonment for enforcing any law of the province made in relation to any of the subjects mentioned in the ninety-second section of "The British North America Act," but the Parliament of Canada has the power, in dealing with criminal law, likewise to impose punishment in relation to those subjects, and it is almost impossible to tell when a forbidden act ceases to be an "offence" and becomes a "crime," if one may use the words "offence" and "crime" as indicating the acts forbidden by the provincial legislature and by Parliament respectively.

Another reason for my thinking that the pardoning power is not vested in the Lieutenant-Governors of Ontario and Quebec by "The British North America Act," is that such powers were not conferred before the union by statute; at least this is my impression.

Even if I am wrong in supposing that Lieutenant-Governors are not vested with any authority to commute or remit sentences, and if it were competent for a legislature to confer such powers, I fear that a great deal of confusion would result from such powers being exercised by those officers, more especially if they are exercised as to all offences which may be within the powers of the provincial legislature, although actually offences against the law of Canada, or the common law.

(4.) The whole Act seems to me to be objectionable on the ground that it disregards the limitation imposed by subsection 1 of section 92, of the British North America Act, as to the office of Lieutenant-Governor.

I should feel obliged if you would give this matter your careful consideration, as I know you will be as fully influenced as I am by a desire to avoid any unnecessary conflict between the provincial and federal authorities, and I feel the more free to make these observations, as the statute in question seemed to me to be perhaps not one that you would regard as necessary or eminently useful, even if you considered it within the authority of your legislature.

Yours very truly,

JOHN S. D. THOMPSON.

*The Honourable Attorney General Mowat to the Honourable the Minister of Justice.*

TORONTO, 8th February, 1889.

MY DEAR SIR,—I have your letter of the 4th. I cannot of course in the hurry of our session go into any elaborate detail, but I may observe, generally, that the Act to which you refer was thoroughly considered before being passed, and that I have as strong an opinion as a lawyer can have in regard to an undecided matter, that the Act is within provincial authority.

Of course, as you say, we have no power to declare the meaning of the British North America Act, and our Act had no intention of so declaring. The 3rd section shows this, as it enacts that nothing in the Act contained is to be construed as implying that the Lieutenant-Governor had not had "heretofore the powers, authorities and functions in the preceding two sections mentioned."

You think it clear that the Lieutenant-Governor's powers may, by provincial enactment, be altered or even abolished, but cannot be added to by a provincial enactment. My view is, and I respectfully mention it for your further consideration, that if a provincial legislature has the power of altering and even abolishing such powers (as to which I agree with you), the right of adding to them is *a fortiori*. Our confederation system has always been worked on this view, and would hardly be workable otherwise. The Lieutenant-Governor represents the executive authority, and as new laws are from time passed by provincial legislatures, the execution of those laws belong to the Lieutenant Governor, and therein additions are constantly made to his powers. Surely it is not necessary that the executive authority incident to new laws should be given to other officers exclusively.

There is no doubt difficulty in defining the criminal law over which the Dominion has exclusive jurisdiction, but there is no practical difficulty, and there will be no confusion in holding that the provincial legislature has unlimited jurisdiction over penalties and punishments prescribed by itself, in respect of matters within its own jurisdiction. I think this view has been already intimated by the judicial committee, but I do not at the moment remember whether this appears from the judgments pronounced, or from the observations made by their Lordships in the course of the arguments.

Again, in regard to offences against provincial laws, a provincial legislature may surely say that the penalty which they have prescribed should be subject to removal by either the Lieutenant-Governor or any other authority that the legislature may in the public interest choose to name.

In the argument before the Privy Council on the question of the Indian Title, Mr. McCarthy insisted with great force that, by the true construction of the "British North America Act" the power of administration and the power of legislation were co-extensive, though the Act contains no express enactment to that effect. I do not controvert that view, for it was a view I had always maintained.

Since confederation there have been many provincial statutes in Ontario (and I have no doubt in the other provinces) adding to the powers of the Lieutenant-Governor, and no objection was made to any of them on this ground, either by any Minister of Justice or, so far as I am aware, by any courts. One of these statutes I may here name specially, because it relates to the very point now in question, viz., 48 Vict., cap. 13, sec. 16 (3), now consolidated in R. S. O., 1887, cap. 90, sec. 3, "An Act respecting the Remission of certain Penalties."

My opinion is, that on the ground stated by Mr. McCarthy, our Act was unnecessary; but as there is no express enactment in the British North America Act on the subject, and the view so insisted upon had sometimes been disputed in private litigation, I thought it desirable that the Act should be passed, in order by express enactment to make clear what otherwise would only be an implication. To prevent any possible misunderstanding as to the purpose of our Act, what is therein mentioned is enacted "so far as this legislature has power to enact," and the same is declared to be "subject always to the royal prerogative as heretofore."

I hope that on further consideration the difficulty which you at present feel will not continue, but, if otherwise, the question is surely one which under all the circumstances should be left to the courts to decide as cases arise, or that you will join with me at once in a direct proceeding for this purpose.

Yours very truly,

O. MOWAT.

*The Honourable the Minister of Justice to the Honourable Attorney General Mowat.*

DEPARTMENT OF JUSTICE, OTTAWA, 9th February, 1889.

MY DEAR SIR,—Your letter of the 8th instant reached me to-day. I see I have been unfortunate in expressing myself as to the division of powers between the Governor General and the Lieutenant-Governors, and that I have been, consequently, misunderstood in my remarks in which I expressed the opinion that the powers of Lieutenant-Governors could not be “added to.” I was referring altogether to the executive powers which were divided by the Act of Union between Lieutenant-Governors and the Governor General, and my argument was intended to be that of the powers then existing; certain were set apart to the provincial executives, and certain to the federal executive, and that the gift of powers to the Lieutenant-Governors could not be increased at the expense of the federal executive, in so far as related to the store of powers then divided.

So far, it seems to me, the inevitable construction of your Act is, that it either declares or amends “The British North America Act,” and, in either case, would be beyond provincial competence.

I thought it right to make this explanation of my former letter, a part of which you seem to have misunderstood, owing to the fault of its expression. For the present, I will only add, your Act does seem to give the Lieutenant-Governor authority over more than the penalties and punishments prescribed by your own legislature, because it professes to give him power (in effect) over penalties and punishments which might be prescribed by your legislature, even though for the present they result from the common law, or from the criminal law of Canada.

Yours very sincerely,

JNO. S. D. THOMPSON.

[Telegram.]

DEPARTMENT OF JUSTICE, OTTAWA, 16th May, 1889.

To the Honourable  
O. MOWAT, Toronto.

Will you consent to state a case to test validity and effect of your chapter 5 of 88, raising the questions appearing on the face of the Act and those suggested in our correspondence?

J. S. D. THOMPSON.

[Telegram.]

DEPARTMENT OF JUSTICE, OTTAWA, 17th May, 1889.

Hon. O. MOWAT,  
Toronto.

My intention was to leave question open to appeal to Privy Council, but think it better to begin in Canadian courts. Will confer with you shortly as to method of reference.

J. S. D. THOMPSON.



*The Honourable the Minister of Justice to Honourable Attorney General Mowat.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th June, 1889.

MY DEAR SIR,—As to the Act respecting executive authority in the province, I think it would be greatly preferable that we should state a case for the opinion of the high court of justice in your province, unless we can get it in the Court of Appeal in the first instance. My object in presenting that view, is to have the matter argued in our courts before it goes to England.

There is a benefit to both sides from having the case twice discussed, but besides this, I would not care to pass over the Canadian courts entirely, and go direct to England.

My reason for suggesting the High Court of Justice, or Court of Appeal, is that we cannot get the matter before the Supreme Court of Canada, or even before the Privy Council, on a case stated. We should have to make a reference by the Governor General in Council to the Supreme Court of Canada, or, in the case of the Privy Council, ask Her Majesty's Government to make the reference. The result would be that no reasons would be given and the decision would be, therefore, less satisfactory and give less confidence than in ordinary cases. By adopting the other course, we have the advantage of two arguments, and what is more important, we have the benefit of a thorough discussion and exposition by the Bench.

Yours very truly,

JNO. S. D. THOMPSON.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 30th May, 1889.*

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, May 18th, 1889.

*To His Excellency the Governor General in Council.*

The undersigned has the honour to submit for consideration his report on the following Acts passed by the legislature of the province of Ontario in the session of 1888, authentic copies of which were received by the Secretary of State on the 11th day of June, 1888.

Chapter 2. An Act respecting the Revised Statutes of Ontario, 1887.

The undersigned in recommending that this Act be left to its operation has the honour to observe that all of the provisions therein expressly made are within the competence of a provincial legislature, provided that the Revised Statutes of Ontario, to which these provisions refer are likewise within such competence.

The following observations which the undersigned has made in reference to a similar Act passed at the session of the legislature of Ontario for 1887 are equally applicable to this Act :

"This chapter gives effect to the last edition of the Revised Statutes of Ontario, and it is under its provisions that those volumes have the force of law.

"In advising your Excellency to allow this chapter to go into operation, the undersigned wishes to state that he is not to be understood as expressing an opinion that "all of the provisions of the Revised Statutes of Ontario are within the legislative authority of the legislature of that province, but inasmuch as the provisions of the Revised Statutes are in the main within such jurisdiction and it is in the public interest that "the Revised Statutes as a whole should have the force of law, and inasmuch also as "the question of legislative competency may be brought up at any time, notwithstanding "the fact that the right of disallowance has not been exercised, the undersigned does "not consider that such power should be exercised even if some of the Acts or portions "of the Acts may be considered as *ultra vires* on the part of the legislature of "Ontario."

Chapter 5. An Act respecting the Executive Administration of the Laws of this province, is made the subject of a special report.

Chapter 7. An Act to give certain powers to the Commissioners of the Queen Victoria Niagara Falls Park.

The undersigned in recommending that this Act be left to its operation desires to call attention to the provisions of section 5 which gives the commissioners of the Queen Victoria Niagara Falls Park power to expropriate the interests of all or any persons in any land lying between the river and the road built on the chain reservation, and to state that the land therein referred to may not be land over which the legislature of Ontario has any legislative control, inasmuch as it is contended that the same is either the public property of Great Britain or the public property of Canada.

Chapter 14. An Act respecting Manitoulin.

By proclamation, issued under the provisions of chapter 91 of the Revised Statutes of Ontario, namely: "The Unorganized Territory Act," the provisional judicial district of Algoma was created, and it is understood a stipendiary magistrate was appointed under that Act for such provisional district.

The object of the Act now under consideration is to set apart from that district the temporary judicial district of Manitoulin and to make provision for the government of such newly created district; and it is provided that all of the provisions of the law relating to temporary judicial districts in the Unorganized Territory Act shall apply thereto.

The original Act authorizes the Lieutenant-Governor in Council to appoint a stipendiary magistrate for each district, each magistrate to have all the powers of a justice of the peace. This officer it is provided, may (sec. 20) act as division court judge of the district for which he is appointed, and, besides any additional jurisdiction given to him by the Act, shall have the like jurisdiction and powers as are possessed by the county court judges in division courts in counties, and shall perform the like duties.

The Division Court, section 24, in addition to the jurisdiction given to the Division Courts under "The Division Courts Acts" shall have jurisdiction in all personal actions where the amount claimed does not exceed \$100, and the stipendiary magistrate shall hear and determine such actions and matters relating thereto in a summary way, and make such orders and judgments as appear to him just and agreeable to equity and good conscience.

Under the Act now under consideration, the first stipendiary magistrate to be appointed for the temporary judicial district of Manitoulin is to be one of the present stipendiary magistrates of the province.

By section 7 the judge of the district court of Algoma, may, if he thinks fit, at the request of the stipendiary magistrate, hold any division court in the said temporary judicial district, and the stipendiary magistrate may, at the request of the district judge act for the judge in holding any division court or performing any other function or duty of the judge in connection with the division courts, in any part of the district of Algoma, and while so acting shall have all the rights, powers and privileges of the judge.

The Unorganized Territory Act, forming a part of the Revised Statutes of Ontario, was allowed by your Excellency to go into operation for reasons already stated.

In an approved report to your Excellency upon a reference from the Government of Quebec relating to district magistrates, the undersigned entered fully into a consideration of the powers of a provincial legislature to pass legislation respecting magistrates, and the observations therein made, apply in many particulars to the provisions of this Statute and of the Unorganized Territory Act, conferring jurisdiction upon stipendiary magistrates in such districts.

In view, however, of the fact that "The Unorganized Territory Act" has been left to its operation, and that the stipendiary magistrate to be appointed under this Act has no greater jurisdiction than a magistrate appointed under the general Act, the undersigned, though entertaining grave doubts as to the validity of this legislation, does not recommend that the power of disallowance should be exercised in respect to it.



Chapter 28. The Municipal Amendment Act 1888.

The undersigned in recommending that this Act be left to its operation would call attention to the provisions of section 23 in relation to transient traders.

Legislation of this character may be an infringement upon the exclusive power of the Canadian Parliament to legislate in respect to trade and commerce. The question, however, is one of doubt which may, without inconvenience, be left to be determined by a judicial tribunal.

Chapter 29. The Assessment Amendment Act, 1888.

Section 5 of this Act amends section 53 of chapter 193 of the Revised Statutes of Ontario intituled "An Act respecting the assessment of property," by providing that a municipal council may, by law, impose an additional percentage charge, not exceeding five per cent, on every tax or assessment, rent or rate, or instalment thereof, whether the same be payable in bulk or instalments, which shall not be paid on the day appointed for the payment thereof.

This provision has been held in some courts to be legislation on the question of interest, which subject, by article 19, section 91, of "The British North America Act" is assigned exclusively to the Parliament of Canada.

This question, however, is one which may properly be left to be raised by those who may be interested in testing the validity of such legislation.

Chapter 32. An Act to provide against frauds in the supplying of milk to cheese or butter manufactories.

This Act has been held *ultra vires* of the provincial legislature by a decision which is now under appeal, and no action is necessary therefore in regard to it.\*

Chapter 48. An Act to provide for the union of the townships of Front of Yonge and Front of Escott.

A large number of residents of the township of Escott have petitioned your Excellency to disallow this Act upon the ground that that township will be prejudicially affected in the matter of taxation, and otherwise by the proposed amalgamation.

The undersigned does not feel, however, that he can recommend the disallowance of the Act. It is one clearly within the competency of a provincial legislation.

It relates to a municipal matter only, and not to a matter affecting in any way the public interests of Canada. Any complaint as to the unfair operation of such an Act should rather be addressed to the provincial legislature than to your Excellency.

Chapter 70. An Act to incorporate the Manitoulin and North Shore Railway Company.

Section 3 of this Act authorizes the company among other things to purchase wharfs, docks, water frontage and lands, and to erect thereon elevators, wharfs, piers, &c.

So far as this section authorizes the purchase of the property in question it is unobjectionable, but a local legislature has no authority to authorize, apart from compliance with the Dominion statute in that behalf, the erection of any structure, even a wharf in navigable water or water under the control of the federal authority.

Inasmuch as the section may be construed as giving to the company all necessary authority therefor, leave being first obtained, under the Dominion Statutes, the section in question, although ambiguous, does not call for disallowance.

Section 12, as the undersigned has formerly pointed out, is an infringement upon the exclusive powers of the Canadian Parliament to make laws in respect to aliens.

Section 25, having reference to bills of exchange and promissory notes, may likewise be an infringement upon the exclusive powers of Parliament to make laws in respect to bills and notes, and the undersigned recommends that the attention of his Honour the Lieutenant-Governor of Ontario be called to these two last mentioned sections.

Chapter 71. An Act to incorporate the Ottawa, Arnprior and Renfrew Railway. This Act seems to call for some comment.

Section 5 purports to give the company power to purchase, sell and dispose of steam and other vessels.

Taken without limitation, this would be an infringement on the power of the Canadian Parliament to legislate in respect to shipping and navigation, and on the provisions of the existing statute law in relation to shipping, which define the mode in

\* See *Reg. vs. Wason*, reported in 17 O. R. (Q. B. D.) 58 and 17 Ont. App. R. 221.



which ships are to be owned, held and disposed of. The section would seem, therefore, to be without validity, except, perhaps, as to classes of vessels to which the law of shipping and navigation do not apply.

Section 20 of this Act relating to aliens, and section 47 relating to negotiable instruments, are open to the remarks made in reference to corresponding sections in chapter 70, and the recommendation which the undersigned has made with respect to chapter 70, he has the honour to make in respect to this Act.

Chapter 75. An Act to amend the Act incorporating the Parry Sound Colonization Railway Company.

Section 2 of this Act purports to authorize the company to enter into arrangements with certain railway companies, which are under the jurisdiction of the Parliament of Canada, and to connect with one of the railways under that jurisdiction. This can only be considered valid as conferring competency on this company to enter into such arrangements and to make such connection, when the same have been authorized by the Parliament of Canada.

Chapter 74. An Act to incorporate the Peterboro' and Chemong Lake Railway Company.

Section 11 of this Act in relation to the purchase and erection of wharfs, piers, docks on navigable waters, and section 16, regarding negotiable instruments, are subject to the same objections as are pointed out in respect of the other Railway Acts referred to in this report, and the same recommendation is, therefore, made in regard to this chapter.

Chapter 79. An Act to incorporate the Central Canadian Exhibition Association.

This Act incorporates an association for the purpose, principally, of holding agricultural and other exhibitions at the city of Ottawa.

It bears internal evidence that it is not a provincial or local association only.

It is incorporated for the purpose of promoting industry, arts and science generally. The corporation, while having its principal place of business in Ottawa, may open such office or offices as may be found necessary for the purpose of its business anywhere. The association is governed by representatives of different societies and institutions in central Canada, both in the province of Ontario and in the province of Quebec, the governing body having among others two members each from the agricultural societies in the province of Quebec, west of the Island of Montreal, namely, the chairman and one member. It would appear, therefore, that the association is not one which a provincial legislature has power to incorporate.

In view of the beneficial objects for which the association is incorporated, and of the fact that no public interest appears to require its disallowance, the undersigned recommends that no further action be taken with regard to it than to call the attention of his Honour the Lieutenant Governor to the doubt which seems to attach to this enactment.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*The Lieutenant Governor of Ontario to the Honourable the Secretary of State.*

GOVERNMENT HOUSE, TORONTO, 23rd September, 1889.

SIR,—Referring to the letter of the Under Secretary of State, of 7th June, 1889, inclosing for the information of my advisers, a copy of an approved Order in Council, and of a report of the Honourable the Minister of Justice, therein referred to, upon certain Acts of the legislature of this province for the year 1888. I have the honour to transmit herewith, a copy of a report by my Attorney General respecting observations contained in the said report of the Minister of Justice.

I have, &c.,

A. CAMPBELL,  
*Lieut. Governor of Ontario.*

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*Report of the Honourable Attorney General Mowat, approved by His Honour the Lieutenant Governor in Council on the 14th September, 1889.*

ATTORNEY GENERAL'S DEPARTMENT, TORONTO, 13th September, 1889.

The undersigned has had under consideration the report of the Honourable the Minister of Justice, dated May 18th, 1889, with respect to certain statutes passed by the legislature of this province in the session of 1888.

These Acts are to be allowed to go into operation, but it seems proper to state the view entertained by the province on the questions suggested. The report calls attention to the enactments which are contained in sections 12 and 23 of chapter 70 of the Acts of 1888, "An Act to incorporate the Manitoulin and North Shore Railway Company" and in sections 20 and 47 of chapter 71 of the same year, "An Act to incorporate the Ottawa, Arnprior, and Renfrew Railway Company," and are alleged to fall within the exclusive jurisdiction of the federal Parliament with respect to naturalization and aliens, and to bills of exchange and promissory notes.

Enactments of precisely the same character have been contained in the various Railway Acts passed in this province from time to time since confederation and without any question being raised as to their propriety, 31 Victoria, chapter 41, section 24, and chapter 42, section 10, etc.

The undersigned apprehends that the provisions contained in "The British North America Act," section 91, subsection 25, conferring on the Dominion Parliament legislative jurisdiction over "Naturalization and Aliens" was not intended to give, and does not give to that Parliament jurisdiction in respect to such a matter as the present, viz., the right of holding stock in or by a director who is an alien, which it is submitted relates not to naturalization and aliens within the meaning of the British North America Act, but to property and civil rights. This view is in accordance with the observation of Mr. Todd's Parliamentary Government in the British Colonies, p. 218," while by the ninety-first section of "The British North America Act, 1867," the Dominion Parliament is exclusively empowered to legislate upon naturalization and aliens, it has been assumed that by the ninety-second section of that Act, which empowers provincial legislatures exclusively to make laws concerning property and civil rights in the province, these legislatures are competent to authorize aliens to hold and transmit real estate.

The undersigned further apprehends that the legislative jurisdiction of the Dominion over bills of exchange and promissory notes is not incompatible with the right of the provincial legislature to confer authority on a corporation to become a party to instruments of this nature, as a matter incidental to such incorporation. The object of the legislation is not to alter or interfere with the general law in respect to those subjects, but to invest the company with the powers necessary for its due working.

If the matter were otherwise doubtful, the fact that legislation of this nature for a period of twenty years passed unchallenged is entitled to weight, as showing that the provincial legislature has the right claimed. See the judgment of the Court of Queen's Bench for Ontario in *Regina vs. Bush*, 15 O. R. 398.

The undersigned respectfully recommends that the despatch of the 7th June be answered by a despatch embodying these observations.

O. MOWAT,  
*Attorney General.*

ONTARIO—52ND VICTORIA, 1889.

3RD SESSION—6TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th June, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1890.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to recommend that the Acts, chapters 1 to 9, 11 to 14, 16 to 77, 79 to 81, 83, 85 to 101 passed by the legislature of the province of Ontario during the session thereof held in the months of January, February and March, 1889, a certified copy of which was received by the Department of the Secretary of State on the 5th day of April, 1889, be left to their operation.

Humbly submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th July, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st, May 1890.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration his report on the following Acts passed by the legislature of the province of Ontario, in the session of 1889.

Ch. 10. An Act respecting the Administration of Justice in certain cases.

Section 8 of this Act purports to give the Lieutenant Governor in Council the power to appoint a police magistrate. The undersigned in this connection would refer to the observations made by him in a report bearing even date herewith, upon the legislature of the province of New Brunswick for the year 1889. The undersigned recommends that the Act be left to its operation.

Ch. 15. An Act respecting Appeals on prosecutions to enforce Penalties and punish offences under Provincial Acts.

Section 4 of this Act provides as follows :—

“Every objection to a prosecution for an offence under the statute of this province, or for the recovery of a penalty under a statute of this province, on the ground of the constitutional invalidity of such statute, shall be taken by demurrer before the defendant has pleaded, and not otherwise; and the court shall determine the validity of the objection raised by the demurrer and give judgment thereon; and no motion in arrest of judgment shall be allowed for any question in respect of such indictment on the ground aforesaid, where the objection might have been taken advantage of by demurrer.”

The section proceeds to make provisions for appeals from any decision respecting the invalidity of the provincial statute.

To the undersigned this section appears to be open to serious objection.

Although doubtless intended to apply to offences punishable by indictment where alone a demurrer is possible, it is wide enough in terms to cover proceeding by summary



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conviction, where there is no demurrer. Apart, however, from this, the provision would appear to be *ultra vires* of a provincial legislature, because of the Provincial Act creating an offence and a penalty. Therefore if void, any enactment like this, to give effect to it, if the objection to its validity is not taken at a certain stage, would be ineffectual. This provision is also open to the objection that it is an attempt to limit the power of the courts to adjudicate upon the constitutionality of provincial legislation. These objections may, however, be removed either by the repeal or amendment of the section in question, or by an adjudication, when these points are raised by persons concerned.

The undersigned recommends that it be left to its operation.

Chapter 78. An Act to incorporate the Amherstburg, Lake Shore and Blenheim Railway Company, section 4.

Chapter 82. An Act to incorporate the Toronto Belt Line Railway Company, section 16.

Chapter 84. An Act to incorporate the Waterloo Junction Railway Company, section 40.

The foregoing Acts in the sections mentioned, contain provisions in regard to promissory notes and bills of exchange which may be invalid.

The undersigned, however, recommends that such Acts be left to their operation, in view of the provisions made by the Act of the Parliament of Canada, passed in the session of 1890, relating to bills of exchange and promissory notes, which permits notes and bills to be made by certain corporations under certain restrictions.

Respectfully submitted,

JOHN S. D. THOMPSON,  
*Minister of Justice.*

ONTARIO, 53RD VICTORIA, 1890.

4TH SESSION—6TH LEGISLATURE.

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 13th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th March, 1891.

*To His Excellency, the Governor General in Council :*

The undersigned having considered the Acts passed by the legislature of the province of Ontario in the session held in the year 1890, received by the Secretary of State on the 23rd April, 1890 (chapters 1 to 68, 70 to 150 inclusive) be left to their operation and that the Lieutenant Governor be informed thereof.

Respectfully submitted,

JOHN S. D. THOMPSON,  
*Minister of Justice.*

*The Honourable the Minister of Justice to Honourable Attorney General Mowat.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th March, 1891.

MY DEAR ATTORNEY GENERAL,—I have been considering the Ontario legislation of 1890. The only Act to which I wish to call your attention is chapter 69, being "An Act to amend the Ditches and Watercourses Act as applied to railways," which, as appears by its first section, purports to extend to all railways, no matter under what legislative jurisdiction. My view is that the province cannot prescribe the mode by which, or the occasions on which, any Dominion railway shall be changed or otherwise affected, or in other words that the construction of these works and the maintenance and alteration of them from time to time is a matter within the exclusive authority of the Dominion legislature. You have, no doubt, noticed that section 14 of our Railway Act provides for drainage, the laying of waterpipes, the making of streets, &c., along, across or under any Dominion railway, if it be decided by the Railway Committee that it is in the interest of the municipality that such work should be done. This seems to give the machinery which is necessary to carry out what your Act is aiming at, and it would be most confusing to have two separate tribunals, one provincial and the other Dominion, making orders in respect to the same railway and perhaps the same piece of work. Now I do not ask you to agree with me, but as it is not a convenient time to raise the main question, I would suggest that without prejudice you should consent to amend the Act in question so as to make it apply only to railways under the legislative jurisdiction of the province of Ontario. May I ask you, notwithstanding your very onerous duties at the present time, to favour me with any early reply.

Yours very truly,

JOHN S. D. THOMPSON,  
*Minister of Justice.*

*The Honourable Attorney General Mowat to the Honourable the Minister of Justice.*

TORONTO, 20th March, 1891.

MY DEAR MINISTER OF JUSTICE,—I have your letter of the 17th, and agreeably thereto shall have the Act to which you refer amended, so as expressly to apply only to railways under the legislative jurisdiction of the province as you suggest, and without prejudice to any question. I suppose that the legislation by the three parties in the matter of the arbitration had better be as nearly as possible in the same terms, and therefore, I am introducing into our legislature a bill following closely the Quebec Act, and without considering whether if I had had to do with the drawing of the Act I should have expressed it in the same way or not.

Yours very truly,

O. MOWAT.

*The Honourable Attorney General Mowat to the Honourable the Minister of Justice.*

TORONTO, 6th May, 1891,

MY DEAR MINISTER OF JUSTICE,—The Act which you suggested with reference to the Ditches and Watercourses Act as applied to Railways (53 Vict., chap. 69) has been passed. It is of great public importance, however, that there should be some provision with respect to Dominion railways, in case we have not the jurisdiction which the Act referred to appeared to assume. I earnestly beg your consideration of a measure for Parliament on the subject.

Yours very truly,

O. MOWAT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st March, 1891.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon chapter 69, intituled :

"An Act to amend the Ditches and Watercourses Act as applied to railways," passed by the legislature of the province of Ontario, in the session of 1890, as follows :

This Act is intended to make provision for the construction of ditches, drains, culverts, etc., through or under railways. Section 1 makes the Act apply to every railway company owning or operating a railway in the province of Ontario.

The undersigned having been of opinion that, in so far as the Act purports to apply to railways within the legislative jurisdiction of the Parliament of Canada, it is of no effect, has obtained an assurance from the Ontario government that the Act will be amended so as to expressly apply only to railways under the legislative jurisdiction of the province.

He therefore recommends that the Act be left to its operation.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*



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ONTARIO—54TH VICTORIA, 1891.

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1ST SESSION—7TH LEGISLATURE.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 14th May, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th May, 1892.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Acts (chapters 1 to 113 inclusive) of the legislature of the province of Ontario, passed in the year 1891, certified copies of which were received by the Secretary of State on the 14th day of May, 1891, respectfully recommends that the same be left to their operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

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ONTARIO—55TH VICTORIA, 1892.

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2ND SESSION—7TH LEGISLATURE.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General on the 30th May, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Ontario in the fifty-fifth year of Her Majesty's reign 1892, (chapters 1 to 7, 9, 11 to 41, 43 to 108) received by the Secretary of State on the 13th June, 1892, and he is of opinion that they are unobjectionable and may be left to their operation.

Respectfully submitted,

J. A. OUIMET,  
*Acting Minister of Justice.*

*From Solicitors Canada Southern Railway Company to the Honourable the  
Secretary of State.*

TORONTO, 28th March, 1893.

SIR,—We beg to inclose a petition, accompanied by a statement of facts connected with it, of the Canada Southern Railway Company, to his Excellency the Governor General, praying for the disallowance of 55 Victoria, chapter 8 of the province of Ontario, and beg that you will lose no time in bringing the matter to the attention of his Excellency.

This petition, accompanied by the statement of facts, was deposited on the 2nd March last, in the office of the Minister of Justice, as we were notified that that was the proper department with which to leave it, but we are now sending this to your department, so that there may be no informality in the matter.

The time for the disallowance of the Act will expire upon the 14th of April, so we beg that there will be no delay in bringing the matter before his Excellency.

We have, &c.,

KINGSMILL, SYMONS, SAUNDERS TORRANCE

*Solicitors for the Canada Southern Railway Company.*

*Petition of Canada Southern Railway Company to His Excellency the Governor  
General of the Dominion of Canada.*

The petition of the Canada Southern Railway Company :—

HUMBLY SHOWETH.

1. Your petitioner is duly incorporated under the laws of Canada as a railway company, and owns and operates a line of railway adjacent to the west bank of the Niagara river from the town of Niagara to Fort Erie, passing through the town of Niagara Falls, in the township of Stamford, in the county of Welland, and so owned and operated the same prior to the happening of the events hereinafter mentioned.

2. Your petitioner, in the course of its business, acquired for its purposes, certain lands, parts of lots, numbers one hundred and sixty and one hundred and seventy-four, broken front in the township of Stamford.

3. Under an Act of the legislature of Ontario, passed in 1885, being 48 Victoria, chapter 21, known as the "Park Act," commissioners were appointed, as therein provided, to select such lands in the vicinity of the Falls of Niagara within Ontario, as were, in their opinion, proper to be set apart for the purpose of restoring to some extent the scenery around the Falls of Niagara to its natural condition, and to preserve the same from further deterioration as well as to afford to travellers and others, facilities for observing the points of interest in the vicinity.

4. The commissioners thus appointed selected lands for the purposes aforesaid, and prepared a plan thereof, including therein some of the said lands of your petitioner, which was subsequently approved by his Honour the Lieutenant Governor in Council and adopted.

Following such approval, and under the Park Act, proceedings were taken as therein provided, to ascertain the value of the lands so selected, with the view to their being ultimately taken for the purposes mentioned and, in the result, the same were so taken and vested in the commissioners, as trustees for the province, they having been duly incorporated as a board under the Act of the legislature, passed in 1887, being 50 Victoria, chapter 13, by which Act the park was called "The Queen Victoria Niagara Falls Park."

6. Part of the lands of your petitioner which were included in the said plan, was conveyed to Her Majesty and subsequently became vested in the commissioners upon the condition and understanding amongst others, that the same should be used only for the said objects and purposes, and they were so used until the session of the legislature held in the year 1892.

7. At the point in question is situated the station of "Falls View" on your petitioner's railway, and it was made an express term of the conveyance of the said lands, "that the view from Falls View Station shall be kept open along the whole line from the Monastery to the northern boundary of range five, and that on the east of the railway only an open fence, which will not in any way obstruct the view, shall be constructed."

8. By an Act, being 55 Victoria, chapter 8 (assented to 14th of April, 1892), the legislature assumed to confirm a certain agreement made between the said commissioners, acting therein on their own behalf and with the approval of the government of the province of Ontario, of the first part, and Albert D. Shaw, Francis Lynde Stitson and William B. Rankine, of the second part, which purports to give to the persons named the right to take water from the Niagara River at a certain point or points, and to occupy certain lands within the park in order that the company may thereby generate and develop electricity and pneumatic power for transmission beyond the park, and for that purpose to erect buildings, power houses and works thereon and in and by the said Act the persons named, with others, are incorporated as a company under the name of the "Canadian Niagara Power Company" with the requisite power to carry the agreement into effect, and for other purposes.

9. Some of the lands so conveyed by your petitioner to Her Majesty is included in the tract which the said power company is in and by the said agreement authorized to occupy and utilize as aforesaid, and your petitioner urges that the giving of such authority is in direct contravention of the condition of the conveyance as set forth in paragraph seven hereof, as the carrying of the same into effect would interfere with the view, and prevent the same from being kept open as stipulated.

10. The making of the same agreement, and the passage of the Act purporting to confirm the same, are also in contravention of the declared objects, as stated in the Parks Act, for which the land of your petitioner and the proprietors of lands similarly interested were obtained, and their conversion to the uses provided for in the said agreement and Acts is contrary to the avowed purposes of the commissioners made when the proceedings were taken to secure the land, and which purposes only were then in contemplation and presented to the parties.

11. The lands of your petitioner were so conveyed in good faith, in consideration of the said conditions and in consequence of the representations so held out, and had it then been known that the lands would have been converted to uses other than those then proposed, no conveyance would have been made by your petitioner.

12. In making the awards in respect of the lands taken for the purposes of the park the arbitrators deliberately took into consideration the fact that they were to be used for such purposes only, and your petitioner is convinced that if it had been represented that the lands were to be available for any other use or purpose the awards then made, which were inadequate in any other view, would have been for much larger amounts.

13. Your petitioner submits and urges that it was an improper use of the legislative powers to authorize the taking of lands for one purpose and subsequently to divert them to other and different purposes, without affording protection to the persons originally affected, either by the restoration of the lands or otherwise, and for that reason the Act of confirmation mentioned is unconstitutional and should be disallowed.

14. Your petitioner begs herewith to submit for your Excellency's consideration a statement of the facts and circumstances connected with the special matter in support of your petitioner's case, which for convenience, is presented in separate form, and asks that the same may be dealt with, as if the contents thereof had been set forth herein.



Your petitioner therefore prays :—

1. That your Excellency may be pleased to disallow the said Act of the legislature of the province of Ontario, and being chapter eight of the Acts passed in the fifty-fifth year of Her Majesty's reign.

And your petitioner, as in duty bound, will ever pray.

THE CANADA SOUTHERN RAILWAY COMPANY.

L. S.

NICHOL KINGSMILL,  
*Secretary.*

Dated at St. Thomas, Ont., 27th January, 1893.

*Statement of Petitioner.*

In the matter of the petition of the Canada Southern Railway Company to His Excellency the Governor General of Canada for the disallowance of the Act of the Legislature of Ontario, being 55 Vic., cap. 8.

*Statement of the petitioner in support of petition and referred to therein.*

1. In 1880 an Act was passed by the legislature of Ontario, being 43 Vic., cap. 13, intituled : "An Act respecting Niagara Falls and the Adjacent Territory," the preamble declaring :

"It has been proposed that the governments of the Dominion of Canada and the state of New York should take steps to restore to some extent the scenery around the Falls of Niagara to its natural condition, and to preserve the same from further deterioration, as well as to offer to travellers and others, facilities for observing the points of interest in the vicinity ;

"And further, it is desirable that any action that the government and Parliament of Canada may desire to take for the purpose of acquiring the lands in the neighbourhood of the falls, with a view to the said objects, should be aided in the manner as therein provided."

The purport of that Act was to enable the Minister of Public Works of Canada, if he saw fit, to acquire and take possession of any land or real estate, &c., which might be expedient to be taken for the purposes mentioned in the Act, and powers were conferred upon him to enable him to carry out the objects.

2. Nothing was done under that Act, and in 1885 it was repealed by the legislature and another Act (which we will call the "Park Act") was passed, being 48 Victoria, chapter 21, entitled "An Act for the preservation of the natural scenery about Niagara Falls," and the preamble follows that of the previous Act, as to the objects for which it was passed.

The Act provides for the appointment of the commissioners for the purpose of carrying out its intent, and, by section 5, they were required to select such lands in the vicinity of the Falls of Niagara, within Ontario, as were, in their opinion, proper to be set apart for the purposes, set out in the preamble of the Act, and, for that purpose, should have power to enter upon, examine, measure and survey such lands, etc., as they may deem necessary.

By section 6, they were to report as to the plan which, in their opinion, ought to be adopted for securing the permanent appropriation of the lands for the objects thereinbefore mentioned, and for the improvement and preservation of the property, and as to the mode in which the same should be managed, in order to secure its enjoyment as a public park.

On the plan being approved, the commissioners were then to proceed to ascertain the value of the lands selected with the view of their being purchased, under the authority of the Act, "for the objects and uses thereinbefore mentioned."

For this purpose by section 10, the provisions of the Public Works Act (Ont.) (R. S. O., 1877, cap. 30) are to apply. That Act provides for the appointment of official arbitrators and machinery for determining the value by arbitration, if no settlement is made with the owners, which arbitrators are appointed by the government.

Section 68 declares :

"The arbitrators shall consider the advantage as well as the disadvantage of any public work, as respects the real or personal property, of any person through which the same passed, or to which it is contiguous, or as regards any claim for compensation for damage caused thereby, and the arbitrators shall, in estimating and awarding the value of any property, real or personal, taken for any public work, or amount for damages to be paid to any person, take into consideration the advantages accrued or likely to accrue to such person or his estate, as well as the damage occasioned by reason of such work."

But as noted hereafter, the arbitrators do not appear to have acted upon this direction, as regards the company's lands, although they did as to other proprietors.

3. The Act further provided that if the commissioners so recommended, the Lieutenant Governor in Council might invite proposals from companies willing to undertake the establishment and maintenance of "the park under the Act," and transfer to such company the right of acquiring "for the purposes aforesaid, the lands at the prices so agreed on or awarded, subject to the ratification of the transfer by the resolution of the legislative assembly."

4. Commissioners were duly appointed, and, as required by the Park Act, prepared their plan of the lands which were considered should be taken "for the purposes of the Act," which was approved by the Lieutenant Governor in Council on the 14th of December, 1885. This plan included some of the lands acquired by the Canada Southern Railway Company, in the vicinity of its Fall View Station, and held partly in the name of Messrs. Cornelius Vanderbilt and Nicol Kingsmill, as trustees for the company.

The commissioners afterwards, in the exercise of their powers, served notices upon all parties interested in lands which they considered should be so acquired, and arbitrations were proceeded with before the official arbitrators appointed by the government, under the Public Works Act. The various awards of the arbitrators were published in August, 1886, and recite :—

"The commissioners, in pursuance of the powers upon them conferred, selected lands for the objects hereinbefore mentioned as a public park, and caused a map, duly certified, of the lands which they had selected to be submitted to the Lieutenant Governor for his approval, in accordance with the said Act."

Which approval was signified, as mentioned.

They further recite, that, under the powers and provisions contained in the Park Act, and of the several provisions of the Public Works Act, the commissioners were authorized to agree with the owners of the lands selected, as to price and terms of payment, with a view to the same being purchased, under the authority of the Act, "for the objects and uses hereinbefore mentioned." And, if unable to agree upon the prices to be paid, then, that the same should be determined by the arbitrators in the manner as provided by the Public Works Act.

And further recites, that notice was given to the owners, by the commissioners, that they required to purchase and take from the owners the lands in which they are severally interested, for the purposes of the said Act, subject to its provisions, and "for the objects and uses therein mentioned."

The awards continue by reciting the steps taken leading to the arbitration, and that, in pursuance of the powers conferred upon them, "and having heard the said the Canada Southern Railway Company and the other parties who appeared before us, and having examined witnesses produced by them before us upon oath, and the evidence laid by the said parties before us for determining the matters in suit, and having also viewed the said lands, in the said schedule mentioned (which schedule describes the land), do make this our award in writing, concerning the premises, in manner and form following, that is to say :—



"We award, decide, order and determine that, in accordance with the provisions in the Act firstly before recited (that is the Park Act), the sum of \$150 shall be paid for the absolute purchase of the fee simple in possession, free from encumbrances of the land particularly mentioned, and described in the said schedule hereunder written, but subject to the drainage and sewage in the said schedule set forth. \* \* \*

And we further decide, find, direct and determine that, in the event of the same land being taken for the said park, the said the Canada Southern Railway Company shall be entitled to be paid by the treasurer of Ontario, such costs as may be taxed by the proper officer, on the usual scale between party and party."

5. An award, similar in terms and expressions, was also made in respect of the land taken by the commissioners, and held in the names of Messrs. Vanderbilt and Kingsmill for the company, fixing the value at \$850, and making it subject to certain rights, as to drainage and water pipes, which had been previously reserved by deed in favour of the "Sisters of our Lady of Loretto," both of which awards, as to amounts, were ultimately accepted as a basis of settlement, although such amounts were totally inadequate, from the company's standpoint especially, if the lands were to be used for any other than park purposes.

6. At the same time the arbitrators with their awards delivered their reasons, that in considering on what basis the various claims for compensation should be assessed, they had adopted certain principles, as defined by well known legal writers. Then they go on to say:

"The witnesses examined had differed very widely in their opinion as to the value of the properties proposed to be expropriated, and we found great difficulty in trying to reconcile their evidence, but we believe that we were not obliged to be governed entirely by those opinions, and that, having carefully examined and viewed the properties in question, we have a right under all the circumstances to exercise our own discretion and judgment, aided by the evidence of those witnesses."

And further:

"And finally we may say that we have in each case that has come before us endeavoured, while rejecting mere speculative values, to award to the owner or owners of the property proposed to be taken in full, just and liberal compensation therefor, assessed upon the basis of the principles and in accordance with the statute before referred to, so far as the same are respectively applicable to the nature and circumstances of the case under consideration."

7. It will thus be seen that in estimating the value of the lands taken, the arbitrators had before them and, considered the objects for which the land was required, and the purposes to which it was to be devoted, which was a point specially pressed upon them by counsel for the commissioners, and it was in view of such objects and purposes only the awards were made.

8. There is here a distinction between the awards made in the Canada Southern cases and those of other owners from whom a portion only of their lands were taken, in that the arbitrators in the latter class—by the awards—say expressly:

"And having also, in making this our award, regarded not only the value of the said lands in the schedule mentioned, but have taken into consideration the benefit derived, and to be derived, by the claimants through the selection and establishment of the said public park, as well as the injury done thereby to the said claimants. (*Vide* award Bush case.)"

But no such declaration appears in the Canada Southern awards; the inferences being that they considered only the actual value of the lands taken without regard to benefit or injury to the company's other lands, deeming their use for a park to be not detrimental to the company who would probably use them for a like purpose;

And it is here to be observed that if the purposes then known had included the construction and placing of electric works in front of the company's station at Falls View, which would be a serious detriment at a point of great attraction on their line, the arbitrators must then have taken into consideration this further object and its effects upon the company's business and purposes.



9. A suit was brought by the company before the arbitration was proceeded with to restrain the arbitrators, on the ground that the lands having been acquired by the company for railway purposes, under the authority of the Parliament of Canada, they had no jurisdiction by reason of the Park Act, which was provincial only, to deal with them, and an interim injunction was asked for, but the court, in the exercise of its discretion, refused at that stage to interfere, considering it would be more convenient to allow the arbitrators to proceed without adjudicating on the merits, and reserving leave to apply again.

10. The arbitrators accordingly went on and made their awards as stated: the piece taken under the award against the company being a strip 60 feet wide lying contiguous to the south boundary of range one, running from the east boundary of the uniform strip of land retained by the company to a point one chain from the river containing 19-100 of an acre; and that under the award against the trustees Vanderbilt and Kingsmill, comprising 1.40 acres, being bounded on the north by the 60 foot strip already mentioned extending easterly to the river, on the west by the Canada Southern grounds and the monastery, on the east by the river, and on the south by the road to the river leading from Street's mill road. The lands in question being indicated upon the plan herewith submitted.

11. The result was not satisfactory to the company, and the suit was prosecuted, but the dispute ended (5th February, 1887) in an agreement with the commissioners under which the company and Messrs. Vanderbilt and Kingsmill, as such trustees, conveyed the said pieces of land to Her Majesty, the conveyances reciting the acts and proceedings as we have indicated, and being made subject to the following express terms, viz.:—

“And subject also to the following stipulations and provisions, which it is mutually agreed by the parties to the within deed shall be observed and performed by them respectively, and by their respective successors and assigns, and by any board of commissioners or those who may have the charge, conduct and management thereof, under any Act of the legislature; that convenient access and egress to and from the park be permitted to foot passengers and employees of the company subject to the following conditions:

1. That the park authorities shall build the means of access over their part of the land and the company theirs.

2. That the access shall be under the control of the park authorities.

And it is further stipulated and provided by and between the parties as aforesaid:

That the Canada Southern Railway Company shall not erect on the land between a certain proposed roadway to be built on their lands and the Niagara Falls Park boundary any building, or use or appropriate such building to the use of any business known as Niagara Falls business, among such being booths for the sale of curiosities, photograph cars or places for the sale of fruit, cakes, or drinks of any kind.

That the view from Falls View Station shall be kept open along the whole line from the monastery to the northern boundary of range 5, and that on the east of the railway only an open fence which will not in any way obstruct the view shall be constructed.

The inducement to this settlement being the fact of the preservation of the land for all time for park purposes.

12. This disposition of the dispute was only reached after much negotiation and correspondence. Our suit was entered for a trial and was ripe for a hearing when the terms in the preceding paragraph mentioned were reached—the consent being embodied into the form of a judgment in the action and it has the force and effect of a decree of the court, which the commissioners have sought to overcome by the legislation of 1892, hereinbefore mentioned.

13. The proceedings of the commissioners were followed by the Act of 1887, under which the acquisition of the land was authorized—gave the title “The Queen Victoria Niagara Falls Park,” and declared the commissioners to be a corporation under the name of “The Commissioners Queen Victoria Niagara Falls Park.” By sec. 3 the lands so selected were thereby, on payment of the awards, vested in the commissioners, as trustees for the province, and the lands are now so held.

14. Until the session of 1892, the company had no reason to complain of any Act of the commissioners or legislature, but at that session legislation took place which has materially affected the situation of the parties, and calls for consideration, and in doing so, it is proper to remember that up to this time no authority was given to the commissioners, nor had they the power to confer any privileges over the lands upon any person or corporation; their duties were only those necessarily incident to the office as custodians in the public interest, with such powers as were essential to control and manage, and for the improvement of the property within the objects stated.

15. There can be no doubt the policy of the Ontario Government, since the park scheme was formulated, has undergone a change, and it has been found the revenues from special attractions in the park are not sufficient to meet expenses, or the interest on debentures, which were issued under the authority of the Park Act to pay for the lands; and rather than that the deficit should form a charge upon the general revenue of the province, the government have deemed it expedient to take advantage of their position and create a revenue out of the property itself, and for this reason authorized the agreement hereinafter mentioned. It is well recognized and understood that the commissioners act only under government direction.

16. By an Act of the session of 1892 (of which the Canada Southern complain and seek to have disallowed), (assented to the 14th April), being chapter 8, entitled "An Act to confirm a certain agreement made between the Commissioners of Queen Victoria Niagara Falls Park and the Canadian Niagara Power Company, and to enable the said company to carry the agreement into practical effect" an infringement was made upon the park project. The agreement mentioned is dated the 7th April, 1892, *i. e.* only seven days before the Act received the royal assent. There is no preamble in the Act, and it is not even stated to be for the benefit of the park. The agreement recites:—

"The company have applied to the commissioners for the right to take water from the Niagara river at a certain point or points in the park, in order that the company may thereby generate and develop electricity and pneumatic power for transmission beyond the park, and desire to secure the right to construct their works in the park, and the commissioners have agreed to permit such construction upon the terms and considerations hereinafter expressed."

It then provides:—

"(1.) For the purpose of generating electricity and pneumatic power to be transmitted to places beyond the park, the commissioners hereby grant to the company a license irrevocable, save as hereinafter limited, to take water from the Niagara river, between the head of Cedar Island and the main land, south, thereof, and lead such water by means of the natural channel between Cedar Island and the main land and the further extension of the channel, to supply works to be erected and constructed by the company in buildings and power houses on the main land within the park, on a location near the foot of the high bluff between the Carmelite Monastery and the rear of the table rock house, which location shall occupy a tract of land of not more than 1,200 feet in length by not more than 100 feet in width, such location of buildings and power houses, from time to time to be erected, as shall be hereafter settled within the aforesaid limits by the commissioners.

"(2.) The company shall have the further right to excavate tunnels, to discharge the waters led from the Niagara River to the said buildings and power houses so that such waters by means of such tunnels shall emerge below the Horse Shoe Fall at or near the water's edge of the Niagara River."

"(4.) The license heretofore granted is for the term of twenty years, commencing with the first day of May, 1892, the company paying therefor at the clear yearly rental of \$25,000 during the first ten years (the rent to be computed from the first day of November, 1892), the rental for the period from the first day of May, 1892, to the first day of November, 1894, which is fixed at \$50,000 having been paid to and accepted by the commissioners in two payments of the sum of \$15,000, and the further sum of \$35,000 paid by the company at or prior to the execution and delivery of this instrument; the rent for the remainder of the first ten years of the term to be payable



in half yearly payments, and at the end of each six months, to wit, on the first days of May and November of each and every year, the first of such semi-annual payments to be made on the first day of May, 1895."

The rental for the next ten years scales up to \$35,000 per annum in the twentieth year.

Subsection (5) then provides for the renewal in periods of twenty years each, making in all 100 years, at a rental of \$35,000 per annum.

"(7.) For the transmission of electricity and pneumatic power to points beyond the park, the company shall have the right to convey the same by wires, cables or other appliances in conduits beneath the surface of the park:—And the company may pass a conduit under the electric railway within the park to enable electricity or pneumatic power to be conveyed between the railway and the edge of the cliff as far as the Niagara Falls and Clifton Suspension Bridge.

"(8.) For the purposes of construction the company shall have the power to construct coffer-dams across both upper and lower ends of the natural channel between Cedar Island and the main land, and to erect a temporary incline from the Falls View station to the Canada Southern Railway to receive supplies and machinery delivered by the said railway, and shall deposit excavated material in such places as the commissioners may direct, and at all times to erect and maintain a submerged dam for the purpose of directing water from the river to the aforesaid natural channel.

"(9.) The commissioners shall not grant or confer upon any other company or person any right to take or use the waters of the Niagara River within the limits of the park so long as this agreement is in force, nor will the commissioners themselves engage in making use of the water to generate electric or pneumatic power except for the purposes of the park, saving always in so far as regards the exceptions contained in paragraph 12 of this agreement.

"(10.) The company undertake to begin the works hereby licensed to be constructed by them on or before the first of May, 1897; and to have proceeded so far with the said works on or before the first of November, 1898, that they will have completed water connections for the development of 25,000 horse power and have actually ready for use, supply and transmission 10,000 developed horse power by the said last mentioned day."

Subsection (41) relates to the prices to be charged for the use of electricity in Canada.

"(12.) The company may agree with the electric railway company for the supply of electricity to work the said railway and also supply electricity for any other purpose within the park."

"(14.) All works to be done and executed by the company in order to carry out the rights hereby granted to them and the manner in which the same may from time to time be proposed to be performed or varied, as well as the exercise of powers within the park, shall, before being commenced, be submitted by the company to the commissioners for approval, accompanied by suitable plans, profiles, specifications and elevations as the case may require, the intention being that the buildings and works shall not detract from the park design and not in any way disfigure the park of which disfiguring or not the commissioners are to be sole judges, and shall not be adopted or proceeded with before the approval thereof in writing shall have been given by the commissioners."

And for greater certainty but not so as to restrict the generality of the foregoing terms of this paragraph it is hereby declared that such approval shall be required in the matters following:—

"(a.) The excavation of the channels to lead the waters of the Niagara from the point or points of intake to the location of the power houses, including the precautions necessary in relation to making openings under the railway for the admission of the waters of the river, and including the wheel-pits, tunnels and portals to discharge the same, and the points of such discharge below the falls."

"(b.) The selection of the site on which buildings and power houses are to be located in accordance with the limits fixed by paragraph 1, and the general design and form of



such buildings as suitable to the surroundings of the site selected. (See paragraphs 1 and 3.)

"(c) The construction of the conduits whereby the cables, wires and pipes to convey the electricity or pneumatic power to points without the park." (See paragraph 7.)

"(d.) The construction and position of cofferdams, incline plane, buildings for temporary use during construction and position of tramways for use during construction and for the removal of excavated or refuse material." (See paragraph 8.)

"(e.) The change of the rising main of the town of Niagara Falls water supply and also the operations of the company are not to interfere with the regular working of the railway or its safety."

The expression "the railway" in this paragraph we understand to mean "the electric railway," and not the "Canada Southern Railway."

17. By the Act the agreement is approved, ratified, confirmed and declared to be valid and binding on the parties thereto, and each of the parties are thereby authorized and empowered to do whatever is necessary to give effect to the substance and intention of the provisions of the agreement, and are thereby declared to have, and to have had, power to do all acts necessary to give effect to the same. The company is then incorporated, with power to maintain and operate works for the production, sale and distribution of electricity and pneumatic power for the purposes of light, heat, and power; to construct, maintain and operate intakes, tunnels, conduits, and other works in, through and under the lands and watercourses constituting the park, but only in the manner and extent to be approved by the commissioners, and as required for the corporate purpose of the company, as provided in the agreement; they are to have power with such pneumatic, electric or other conductors or devices as shall have been permitted and approved by the commissioners to conduct, convey and furnish, or to receive such electricity or power to or from any person or corporation, at any places, by any means, through, under and along any property in respect of which they may have acquired the right, and through, under and along the streets and public places of any municipality, or across, or along any of the waters within the province by the erection of fixtures, including posts, piers or abutments for sustaining the wharves or conduits, provided the same are so constructed as not to incommode the public use of such street or public places, or impede the access to any house or building erected in the vicinity of the same, or interrupt the navigation of such waters. The powers to be exercised in the streets and public places are to be exercised subject to any agreement made with any municipality respecting them; power is given to the company to hold stock in any corporation created for the purpose of supplying water of the river, or any corporation created for or engaged in the use of power or light derived from such water, or in any corporation which shall contract to purchase, lease or use any power or property of the company, and its stock may also be owned, held and voted on by any such corporation or person; the company shall have power, upon receiving proper authority, to take its lines or conductors over any bridge over the river, subject to any agreement that may be made with respect thereto with the owners of the bridge. It is also to have power to acquire the agreement already mentioned (which was entered into with the persons who subsequently obtained the corporation), and all rights granted thereunder by the commissioners, and the benefit of any work that shall have been done, and any moneys that shall have been expended in connection with the works prior to the organization of the company.

There is a capital stock authorized of \$3,000,000, the proceeds of which to be applied, first, to the payment of all fees, &c., in connection with the Act, making surveys, &c., and the remainder towards making, completing and maintaining the works, and to the other purposes of the Act. With power to issue paid up stock for services, or in acquiring the agreement. A bonding power of \$5,000,000 to be a charge upon the works, franchises and plant of the company.

18. The extraordinary powers given by this agreement, and confirmed by the Act, will be seen at a glance, and while the Act does not assume to give any right of expropriation, the rights of others are very materially concerned, apart from any other consideration, when the scope and extent of the agreement is understood to give a monopoly to the power company for the period of one hundred years, subject to no other approval

than that of the commissioners, a monopoly which could not have been acquired, had not the lands been taken compulsorily by, and placed under the control of, the government.

The land embraced in the first paragraph of the agreement includes a large portion of that which was obtained from the Canada Southern, and Messrs. Vanderbilt and Kingsmill, practically for nothing, and is directly in front of Falls View Station, the existence of which position is fully recognized by section 8 of the agreement.

19. While the measure is, in a sense, public, it nevertheless affected private rights, and it is fair to say it should have been treated as a private bill, so as to require notice to be given, and that this was evidently the view which the parties themselves took, appears from the fact that on the 5th of March, 1892, notice was inserted in the official *Gazette* of an application to incorporate the company, as required by the rules pertaining to such measures, but the House was sitting, and the time for receiving petitions had expired. We took steps to oppose the application, and notified the proper committee that it would be opposed, but the notice was withdrawn, and we, therefore, concluded the matter had dropped, as no private bill could then be introduced, according to the rules of the House. No notice of the agreement reached us, and the Canada Southern, although directly affected, was not invited to express its views upon it.

20. On the day of the date of the agreement, viz., Thursday, the 7th of April, the Attorney General gave notice of motion in the House for leave to introduce a bill to confirm the agreement and to enable the company to carry it into practical effect. There was no public notice given, and it consequently did not reach our attention until the following day, and, upon our application for a copy of the bill, we were advised it had not been printed, and we could not have it. On that day (the 8th), however, the Attorney General introduced it, and it was passed through all its subsequent stages on Saturday, the 9th, and received assent on the 14th.

21. It has been generally understood, and is doubtless the fact, that this power company is identical with the cataract company, which is conducting operations on the New York side of the river, the intention of the licensees being to secure control of the power in this neighbourhood on both sides of the river, and place it in the hands of one concern, foreign at that. This is borne out by reference to section 3 of the Act, which purports to enable any company, incorporated for similar purposes, to own, hold and vote upon the Canadian Niagara Power Company's stock (ante paragraph 17).

22. The particular place in question is what is known as "Falls View Station" of the Canada Southern and, in order to secure the location and make it an objective point for traffic and to give the public travelling over the company's line an opportunity of viewing the falls, the river, the rapids and river's bank, free from obstruction, the company expended a large amount of money in acquiring the position, besides in the way of outlay for improvements, cutting down banks, preserving slopes, etc.

23. It was an express condition of the settlement and judgment, as will be seen by reference to paragraphs 11 and 12, that the view should be kept open along the whole line from the monastery to the northern boundary of range five, which is the petitioner's point of vantage, and the agreement with the power company is a distinct breach of this condition, as the effect of the construction of the works authorized by it must be to interfere with the view and frustrate the object which the commissioners and company had when the terms of settlement were reached. What the loss will be to the Canada Southern, if the Act is allowed to remain, cannot be estimated. It will, in any aspect, be most serious, and it should be disallowed so as to prevent any disturbance of the company's position, or any interference with the conditions of settlement and judgment.

24. There is an entire absence of any provision in the act or agreement for the protection of the interests of the Canada Southern, or, in view of the change of policy, any proposal to restore the company to its original position by placing its lands again under its control and the company is therefore driven to seek a remedy to overcome the wrong which has been occasioned to it by this legislation.

25. Attention is directed to the wording of the Act, which declares the commissioners "to have had" the power to enter into the agreement—from which it is evident the



legislature recognized that they had no such right previously; that the agreement relates to matters not within the contemplation of the Park Act; and, by this means, the legislature has placed in the hands of the commissioners, an answer to any legal proceedings which might otherwise be taken by persons intended adversely.

26. In this aspect of the legislation there appears to be no remedy short of disallowance—had it not been for the declaration of power, no doubt an injunction could have been obtained, the agreement going into effect as against the Canada Southern, especially as the lands are not vested in the crown but in the commissioners, as a corporation, (section 3, Act of 1877), but such a possibility has, as we have pointed out, been taken away.

27. Even apart from the conditions of settlement, it is too much to say that what has been done here amounts to a confiscation of the rights and remedies of the railway company, without providing some protection or compensation; rights and remedies, which we say would have existed in its favour, as against the commissioners, but for the legislative interference. It is nothing short of an attempt to make up the loss in maintaining the park at the company's expense—as well as at the expense of the other original proprietors from whom lands were taken—for it must be conceded that where lands have been acquired for a particular purpose with the sanction of the legislature, there is a resulting trust in favour of the original proprietor where such lands are afterwards diverted to other purposes, and that resulting trust has, in this instance, been legislated away without regard to the private interests.

We submit, therefore, that the Act should be disallowed on the grounds, amongst others:—

1. Because the land, so conveyed as aforesaid, is being diverted from the purpose for which it was obtained.

2. Because the award and conveyance were made in view of the said land, and the land within the park boundaries being retained under public control for park purposes only.

3. Because it assumes to supersede a judgment of the High Court of Justice.

4. Because, by authorizing the erection of buildings at Falls View, the commissioners sanction a breach of the conditions under which the petitioner conveyed its said lands.

5. And that, for the reasons stated, the Act was passed contrary to the well recognized principles of right and justice and is subversive of the public interest, being an improper exercise of the legislative powers.

It is also submitted as a matter of consideration, whether an Act, in authorizing the diversion of the waters of the Niagara River, an international stream (section 1 of agreement, ante, p. 10), and also in assuming to grant a monopoly in favour of the power company, as to the waters contiguous to the park (section 9 of agreement, ante, p. 11), is not *ultra vires* of the legislature.

The petitioner will verify the facts hereinbefore stated, as may be desired,

KINGSMILL, SYMONS, SAUNDERS & TORRANCE,  
*Solicitors for the petitioner, the Canada Southern Railway Company.*

Toronto, January 27th, 1893.

*The Deputy Minister of Justice to Honourable Attorney General Mowat.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th March, 1893.

SIR,—I beg to inclose, for your remarks, the petition of the Canada Southern Railway Company for the disallowance of 55 Victoria, chapter 8, (Ontario), also a statement of facts which accompanied the petition.

As the time for reporting upon this Act is drawing to a close, will you kindly favour me with a reply as soon as possible, and also return the petition and statement of facts.

I am, &c.,

E. L. NEWCOMBE,  
*Deputy Minister of Justice.*



*The Honourable Attorney General Mowat to Deputy Minister of Justice.*

TORONTO, 12th April, 1893.

DEAR SIR,—I have your letter of the 30th ultimo inclosing petition of the Canada Southern Railway Company for the disallowance of the Ontario Act, 55 Victoria, chapter 8, entitled "An Act to confirm a certain agreement between the commissioners of the Queen Victoria Niagara Falls Park and the Canadian Niagara Power Company, and to enable the said company to carry the agreement into practical effect," also a statement of alleged facts which have accompanied the petition.

Your letter requests my reply as soon as possible, as the time for reporting on the Act is drawing to a close. From the pressure of business in the preparation for, and in connection with, the session of the legislature here, it has been impossible for me to prepare a reply before to-day.

I repudiate the notion of the petitioners that it is the office of Dominion Government to sit in judgment on the right and justice of "An Act of the Ontario Legislature relating to Property and Civil Rights," that is a question for the exclusive judgment of the provincial legislature; and on this account it is with hesitation that I proceed to remark on the assertions and arguments contained in the two documents, and if I do remark on them, it is from unwillingness that from my silence, any one should be left to suppose or assert that the charges made are true.

What the petitioners say, is in substance, that the Act is inconsistent with right and justice, that it is a direct contravention of an express agreement with the Canada Southern Railway Company, to the effect that the view from the Falls View Station should be kept open along the whole line from the northern boundary of range 5, and that on the east of the railway only an open fence which will not in any way obstruct the view shall be constructed: that in carrying the Act into effect will interfere with this view: that the motive of the commissioners in procuring the Act was to "overcome" the agreement they had entered into with the petitioners, as well as a judgment of the High Court: and that the Act is on the part of the government nothing short of an attempt to make up the loss in maintaining the park at the company's expense, as well as at the expense of the other original proprietors from whom lands were taken. It is stated to be well recognized and understood that the commissioners act only under government direction.

I read with astonishment these and some other statements in the documents mentioned. But for the statements being there, it would not have occurred to me as possible for any one to make them.

Whatever, as a matter of constitutional right, the legislature in the common interest might be entitled to do without interference by the Dominion Government, the fact is that the Act does not take away any legal right whatever which, but for the Act, the Canada Southern Railway Company, under their agreement with the commissioners, would now have. So far from such a result being the motive and object of the Act, it was not contemplated for a single instant as even desirable if it were practicable. In the interests of tourists and the public, the commissioners and the government are desirous of the view from the company's station being unobstructed as the company can be. The electric works contemplated will not be an obstruction to that view, and will be an additional object of interest to intelligent visitors, besides affording a revenue for park purposes.

The legal meaning of the Act and the object of it are alike absolutely the reverse of what the petitioners allege. Its purpose was, and its effect is, to deal with the rights of the crown as representing the province, and not the private rights of others.

The Act does not mention the petitioners, nor refer to the view to which by agreement they are entitled, and the sole foundation for the petitioner's assertion is, that the agreement between the commissioners and the power company authorizes the power company, for purposes specified, to erect buildings and power house on such part of a specified locality as the commissioners should approve; while there is no pretense for

saying that any buildings so erected must necessarily obstruct the view from the station. The station is on a hill 100 feet above the level of the park, and buildings of the required extent and height would not affect the view for which the company stipulated, and to which they are entitled.

The power company does not claim the right of erecting buildings which would obstruct the view, and if they did, no such claim could be sustained in law or equity. I may observe here, though the fact is not material to the present question, that the map attached to the petitioner's statement is misleading as regards both the extent of territory which was conveyed by the railway company and their trustees to the Commissioners, and the extent of territory on which the power company are to erect their buildings. The land so conveyed to the commissioners does not go to the water's edge as the map indicates. Between the railway company's land and the water's edge there is a strip of land 66 feet in width which the railway company or their grantors did not own, and the commissioners' title to which is not derived from the company or their trustees. The land conveyed to the commissioners is a little over an acre and a half. It consists of two parcels, one comprising an acre and  $\frac{40}{100}$  of an acre and the other  $\frac{19}{100}$  of an acre, making together one acre and  $\frac{59}{100}$  of an acre. The map and the statement give these quantities correctly, and the quantity so embraced in the two parcels is the quantity, not to the water's edge, but only to this strip, and is exclusive of the strip.

The description in the award is expressly not to the river, but at a distance of one chain from the river. So the land marked on the map for the Canadian Niagara Power Company extends far beyond the locality to which the buildings are confined by the agreement between the company and the commissioners.

That there is no thought of diverting the park lands to other purposes appears from the very agreement which the petitioners assail. The paragraph thereof marked (14) contains the following provision. The intention being that the buildings and works shall not detract from the park design, and not in any way disfiguring the park, of which disfiguring or not the commissioners are to be the sole judges. The power company have to accept as final the judgment of the commissioners on this matter, as well as to the elevation of the buildings and other matters specified in the agreement.

Now, to unnecessarily construe a provision in an Act of Parliament of this kind, that the power company may erect buildings so to be approved, as being an authority to the company to erect buildings, which by reason of their height or otherwise would interfere with the rights of persons who are not named in the Act, and which the commissioners could not sanction without violating their own agreement with the Canada Southern Railway Company. This is misconstruing the Act, and is asserting or claiming for it an effect and an intention not warranted by the language, and opposed to long settled and well known principles of statutory interpretation. As a learned English judge has said in regard to such contention, it is unnecessary to refer to any cases on the point. They might be cited without end. The Court of Appeal took occasion however in the case of *re Goodhue*, 19 Gr. 366, to refer to some of the principal cases. The present Act confirms an agreement between the commissioners, a corporation of the one part, and the individuals named in the Act, and thereby also incorporated, of the other part. Such an Act is of course in the nature of a private Act. The petitioners themselves correctly claim that to be its character.

Now the first head note *re Goodhue* is that the rule in respect to private Acts of Parliament is, that the interests of persons not expressly named in them are not affected by the provisions thereof. To give the Act the operation which the petitioners assert, it would have to be shown (to use the language of decided cases) that the Act clearly and inevitably comprehends the estates and rights of strangers. Here I have pointed out that, so far from the Act clearly and inevitably comprehending the railway company's right to the view from Falls River Station, the power company's right to build does not require the recognition of a right to build to a height which would interfere with the petitioner's view, and by the agreement the commissioners reserve a discretion to themselves to approve of the plans, profiles, specifications and elevations, etc., before the work is commenced. The commissioners could not approve of any plans which would



interfere with the view which, by the agreement with the Canada Southern Railway Company was to be kept open. Beyond all doubt the Act does not "inevitably comprehend" this right of the railway company, as a right of which the Act was to deprive them. For such a purpose the intent would need to have been (to use again the judicial language) "plainly and unequivocally stated in language so express, as to admit of no possible misconstruction, and no shadow of a doubt." There must be an express and explicit enactment to that effect. Who can possibly say that this is the character of the language to which the petitioners ascribe the meaning they complain of? Again it is laid down that, where a construction is claimed for an Act of Parliament which "interferes with private rights and private interests, it ought to receive a most strict construction in so far as those rights and interests are concerned," and there are numerous other cases to the same effect.

The cases in which the sentences I have quoted occur, are cited with others to the same effect in the judgments in the Goodhue case. It is not worth while referring to other cases, the point being so plain. The elementary rule they establish has evidently been overlooked on the part of the petitioners.

Even without reference to the judicial decisions, the Interpretation Act R.S.O., c. 1, s. 8, par. 47, is sufficient to forbid the misconstruction on which the petitioner's claim to disallowance proceeds. The Interpretation Act provides that "no provision or enactment in any Act shall affect in any manner or way whatsoever the rights of Her Majesty, her heirs or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby, nor if the Act be in the nature of a private Act, shall it affect the rights of any person or body politic, corporate or collegiate, such only excepted as are therein mentioned or referred to."

The Act passed the house unanimously. It could not have passed through the House as it did, if a single member had objected.

I have remarked on the principal allegations of the petitioners. The two documents contain other allegations which also I dispute, but they are not important enough for further reference to them. Their mention of the company which the Act incorporates being identical with the cataract company, and of the concern being foreign at that, is amusing, seeing that the petitioner's company is chiefly owned by and controlled by foreigners of the same nation as the cataract company.

What I have said is sufficient to show how clear it is that, if the petitioner's real objections to the Ontario Act are those set forth in the petition and statement, they arise from a misconception of the effect of the Act, and error as to its motives and purposes.

But I submit further that the objections, even as stated by the petitioner, are not such as it is the office of the Dominion Government to deal with.

I return the petition and statement as you request.

Yours truly,

O. MOWAT.

*Deputy Minister of Justice to Honourable Attorney General Mowat.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th May, 1893.

DEAR SIR,—I beg to acknowledge the receipt of your letter of the 12th ult., containing your observations as to the petition of the Canada Southern Railway Company for disallowance of the Ontario Act, 55 Victoria, chapter 8, and I beg to thank you for furnishing me with your views so promptly. I observe that you repudiate the claim of the petitioners that the Governor General in Council should consider, for the purpose of disallowance, an Act of the provincial legislature dealing with the subject of property and civil rights; also, that you urge that the intention and true construction of the Act in question is not such as to admit of prejudice to the rights of the petitioners. Leaving aside the question whether the power of disallowance should be exercised as to a statute which does interfere with vested rights or the obligation of



contracts, would you consider the suggestion that there may be sufficient grounds for apprehending prejudice to the rights of the petitioners, under the operation of this Act, to warrant your legislature, at its present session, passing a declaratory measure which would establish, beyond all doubt, the construction which, in your view, the Act is intended to bear? Such an enactment would, of course, satisfy the petitioners and relieve this department from further consideration of the matter.

Yours truly,

E. L. NEWCOMBE,  
*Deputy Minister of Justice.*

*Solicitors Canada Southern Railway Company to the Honourable the Minister of Justice.*

TORONTO, 8th May, 1893.

SIR,—In the matter of the petition of the Canada Southern Railway Company for the disallowance of the Act of the legislature of Ontario, 55 Vict., chap. 8.

We beg to acknowledge your courtesy in inclosing to us a copy of the letter of the Attorney General of Ontario, under date of 12th April, 1893, in answer to our petition for disallowance.

We find, in the plan submitted, there might possibly be conveyed an erroneous impression as to the 66 feet along the bank. The gentleman who prepared the plan had before him at the time a copy of the deed from the Sisters of Loretto to Messrs. Vanderbilt and Kingsmill, which covered the land to the water's edge, and the commissioners, in the conveyance they took from our clients, took whatever right our clients had to the chain referred to, notwithstanding the description in the award only went to within one chain of the river, but, however, the point is immaterial, and does not affect the matters in question.

In reply to the Attorney General's repudiation of the notion that it is the office of the Dominion Government to sit in judgment on the right and justice of an Act of the Ontario legislature relating to property and civil rights, we beg leave to refer to the remarks of that learned jurist, Chief Justice Draper, in his judgment in the case the Attorney General refers to, viz., *re Goodhue*, in which he says:—

"Mr. Sedgewick, in his learned and admirable Treatise on Statutory and Constitutional Law, argues, and I think unanswerably, that the judiciary have no right whatever to set aside, to arrest or nullify a law passed in relation to a subject within the scope of legislative authority on the ground that it conflicts with their notions of natural right, abstract justice and sound morality. The learned chief justice goes on to say: A late British writer has remarked, it may be argued that a second chamber is considered a valuable element in the constitution (in the mother country), and that as to its importance he makes no dispute; on the principle of the division of labour, it is wanted for the despatch of business, and is also required for the interposition of discussion and delay between the hasty introduction of bills and the final act of legislatures. In regard to the absence of the second chamber, it may be desirable, says the learned chief justice, so far at least as estate and private bills are concerned, that as such bills involve ordinarily no mere party political considerations, all those whose interests are or may be touched have a right, in the first place, to expect a careful examination of their contents on the part of the provincial executive, and the withholding of the royal assent if it is found that the promoters of the bill are seeking advantage at the expense of others, whose interests are as well grounded as their own; and further, if from oversight or any other cause provisions should be inserted of an objectionable character, such as the deprivation of innocent parties of actual or even possible interest by a retroactive legislation, such bills are still subject to the consideration of the Governor General, who, as representative of the sovereign, is intrusted with authority to which a corresponding duty attaches, to disallow any law contrary to reason or natural justice and equity, so that while our legislation must unavoidably originate in a

single chamber, and can only be openly discussed there, and once adopted there cannot be revised or amended by any other authority; it does not become law until the Lieutenant Governor announces his assent, after which it is subject to disallowance by the Governor General."

We respectfully submit his Excellency the Governor General should act in this matter on the spirit of this passage. The Act complained of, as we have heretofore set forth, was introduced as a private bill, and our clients being on the alert, notified the proper committee that it would be opposed, upon which the notice was withdrawn. The Act was then introduced by the government and hurried through all its stages without any notice to our clients, who, by their notice to the proper committee, were known to be objecting.

The Act complained of confirmed an agreement entered into only seven days before the Act received the royal assent, and such agreement is declared to be valid and binding on the parties thereunto, and each of the parties thereunto were thereby authorized and empowered to do whatever was necessary to give effect to the substance and intention of the provisions of the agreement. The Act does not stop there, but proceeds to enact that they are thereby declared to have, and to have had, power to do all acts necessary to give effect to the same. Notice was given by the Attorney General on the 7th April, the day the agreement between the commissioners and the power company was dated; the bill was not even printed then, and, on application by us, no copy could be obtained, and, on the next day, it was passed through all its stages, and received the royal assent on the 14th. The facts clearly show that it was one of those cases that come within the class referred to by Chief Justice Draper, and, under all the facts, it cannot be treated other than as a public Act, and there is no guarantee that the courts would otherwise consider it, or that our clients' claims would be recognized in an appeal to the courts, and we submit that they should be placed in that position.

The Act empowers the commissioners to contract with the power company for privileges that are not within the purposes for which the government allowed the commissioners to expropriate our clients' lands, and gives the commissioners leave to contract with the power company for the erection of buildings that obviously would interfere with the rights that were retained by the Canada Southern Railway Company, and detract from the view stipulated for.

We do not think our clients should be placed in a position of having to test in courts the question of whether, when the objectionable law becomes operative, the commissioners would continue to have sufficient control over the power company to prevent the latter from erecting such structures as will obstruct our view. The Canada Southern Railway Company might possibly have the right to sue the commissioners for the recovery of lands which were sold to them for park purposes, and for which they were trustees for the public; or might sue for damages caused their property by the obstruction of the view, but it is not the return of the lands nor the recovery of damages that our clients want; what they desire is simply that their view will always be kept open, and that nothing unsightly will be erected between them and the falls.

The Attorney General says that the electric works contemplated will not be an obstruction to their view; all of which may be quite true, but our clients wish to be assured that this statement will be equally true at all times in the future, and that, notwithstanding the passage of the power company's Act, they would still be in a position to compel the commissioners to carry out their contract with them, and that they shall not at all be estopped by the supremacy of the Act of parliament.

From what our clients have heard from the officers of the power company and their counsel, we are advised that the power company themselves hold the view that, after the Act becomes operative, the park commissioners would be deprived of the ability to prevent their erecting works of any character that may be necessary to the proper carrying on of their business; they consider that the right given them is to carry on business in an adequate manner in the park, and that the sole limit upon the erecting of buildings would be the necessities of business from time to time.

Our clients cannot but regard as anything but humorous the Attorney General's statement that the unsightly roof which the power company proposes to construct, and



upon which the eyes of all their passengers at the falls would rest, will be an additional object of interest to intelligent visitors; the machinery thus established within the buildings will perhaps be an object of interest to those of a scientific turn of mind, but brick walls cannot but be an eyesore to those who are obliged to look across it to view the falls.

We are further advised that the Attorney General is entirely mistaken when he says that the power company does not claim the right of erecting buildings which would obstruct the view; on the contrary, our clients have derived the impression from the officers of the company that they do claim such a right, and that they consider the proposition to erect buildings for the present below the line of sight from the Canada Southern Railway station, a purely gratuitous and charitable act on their part. The officers of the power company do not, we are informed, concur with the Attorney General in thinking that their assumed right to erect any buildings that may be necessary to the proper conduct of their business could not be sustained in law or equity.

We may further add that in order to effect an amicable settlement of this matter and being desirous not to unnecessarily interfere with the commissioners in their endeavour to raise a revenue for park purposes, notwithstanding the object is foreign to the purposes for which the lands of private parties were acquired, our clients made a proposition to the power company respecting the buildings proposed to be erected, but we regret to say there does not appear to be any prospect of the power company entertaining the proposition.

In face of the statements of the Attorney General, made in his letter to the Minister, of the 12th of April, recognizing the view for which the company stipulated, and to which they are entitled, we cannot conceive why there should be any hesitation upon his part to introduce an Act stating that the rights of the Canada Southern Railway Company are not to be interfered with.

We are the more urgent in pressing our position upon his Excellency because the power company evidently have the idea that the Ontario Government and the commissioners are entirely favourable to them, and that our clients have no power to protect themselves.

We have the honour to remain, sir, your obedient servants.

KINGSMILL, SYMONS, SAUNDERS & TORRANCE.

*Solicitors Canada Southern Railway to Honourable Attorney General Mowat.*

TORONTO, 3rd April, 1893.

SIR,—Adverting to the interview which we had lately with you regarding the subject of the petition of the Canada Southern Railway Company for the disallowance of the Act incorporating the Canadian Niagara Power Company, and the communication which, we understand, has been addressed to your government by the Secretary of State, we beg herewith to inclose draft of a bill, adding a clause to the Act incorporating the power company, so as to protect the interests of the Canada Southern Railway Company, which, we trust, will have your favourable consideration. We take this step in the hope and expectation that, by your early assent to the proposed amendment, or something equivalent to it, we may communicate with the Secretary of State and withdraw the matter from the consideration of his Excellency the Governor General.

We beg herewith also to hand you a copy of the plan which accompanied our petition, and which we were not able to include with the papers relating to the matters sent by us to you.

We have the honour to remain, sir, your obedient servants.

KINGSMILL, SYMONS, SAUNDERS & TORRANCE.



*Honourable Attorney General Mowat to Solicitors Canada Southern Railway Company.*

TORONTO, 12th April, 1893.

GENTLEMEN,—*Re* Canada Southern Railway and Canada Niagara Power Company. I have your letter of the 3rd. In consequence of the pressure of sessional business, I have not been able until now to give any attention to your letter or to the documents of which you sent me a copy some days before. I had read these documents in part only, and in a cursory way, until now.

You intimate in your letter that if I give an early assent to a bill to the effect of the draft which you inclose, or to something equivalent, you will withdraw the matter from the consideration of his Excellency the Governor General. Before your interview, with me, I had understood (not from you) that you had already abandoned the application to the Governor General as useless. It seems I was in error on that point. I have, therefore, to say in answer to your letter that the government cannot possibly purchase, at the price you suggest or any other, the withdrawal of your petition to the Governor General. I am in no alarm about a disallowance of the Act.

I am surprised to observe in the statement of facts which accompanied your petition, that you merely fear that the legal effect of the Ontario Act would be to take away covenanted rights of your company, but you assert that that was the very purpose of the commissioners, and (by implication) of the government. You misconstrue the legal effect of the Act, and misapprehend or misstate its purpose.

While your application for disallowance is pending, I have nothing further to say.

Yours truly,

O. MOWAT.

*Solicitors Canada Southern Railway Company to Honourable Attorney General Mowat.*

TORONTO, 18th April, 1893.

SIR,—*Re* Canada Southern Railway and Canada Niagara Power Company. The absence of Mr. Kingsmill and Mr. Symons from Toronto has prevented an earlier reply to your favour of the 12th inst.

Allow us in the first place respectfully to repudiate any intention of attempting to purchase your consideration by the withdrawal of an application for disallowance, a step which was taken, in our view, in the interest of our clients, and to place ourselves in the position of not having neglected any step that might tend to their benefit. Acting from these motives, we must confess that your letter has caused us surprise, particularly in view of your apparently favourable attitude at the interview of the 1st of April, with which you honoured Mr. Kingsmill and Mr. Symons, and at which you gave them to understand that your impression was there was no intention to interfere with the rights of the Canada Southern Railway Company, and that some assurance should be placed on record to protect that company in their rights, as declared by the consent judgment of the court, and in the conveyances.

The application for disallowance was only made after we had for months endeavoured to get an assurance from your government that our client's rights would be protected, and when the petition was sent in we immediately notified you to that effect and sent you all the material upon which it is based, so that we are not in any way responsible for your supposing that the petition had been withdrawn; we further submit, the fact of one petitioning for disallowance should not interfere with the claims of our clients being considered upon the merits; if, as we contend, the legislation was an infringement of our client's rights, the filing of the petition should not, in our humble opinion, prevent the legislature affording a proper remedy.

Our letter of April 3rd was intended simply to save trouble, and to give you our view of the mode in which the remedy could be applied, and we desired to be put in the position of withdrawing our petition at Ottawa, by getting some assurance from you that you would protect our position. We would have gladly taken your verbal assurance on the subject, made on the 1st of April, had it not been that you expressly guarded yourself against your conversation with us being considered as in any way binding upon you.

We would be glad to be convinced that we had misconstrued the effect of the Act, or misapprehended its effect; we could have no reason for mis-stating it, as your letter alleges we have done.

The simple fact is that the Canada Southern Railway Company has, under a consent decree of the court, and under the conveyances which followed the decree, the right to have the view from its Falls View Station kept open within certain points mentioned. The Act complained of confirms an agreement permitting the Canadian Niagara Power Company to erect buildings and power-houses on the very location which the Canada Southern Railway Company has the right to have kept open, and the Act declares the parties to have and to have had power to do all acts necessary to give effect to the same. This seems to us to interfere with the agreement made with the Canada Southern Railway Company, and we appealed to you with a perfect confidence in your justice to prevent the rights of the Canada Southern being infringed upon, and still have faith in your not permitting this wrong to continue. We beg, therefore, to ask your further consideration of the matter; and, as the president and officers of the Canada Southern are most anxious about it, we would be glad to hear from you at your earliest convenience.

We have, &c.,

KINGSMILL, SYMONS, SAUNDERS & TORRANCE.

*From Honourable Attorney General Mowat to Solicitors Canada Southern Railway Company.*

TORONTO, 20th April, 1893.

DEAR SIRs,—I am directed by the Attorney General to acknowledge the receipt of your letter of the 18th, and to say that no wrong has been done or will be done to the Canada Southern, but that he declines further consideration of the matter pending the application for disallowance.

Yours truly,

S. T. BASTEDO,  
*Private Secretary.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd June, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th May, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts of the legislature of the province of Ontario, passed in the fifty-fifth year of Her Majesty's reign (1892) certified copies of which Acts were received by the Secretary of State on the thirteenth day of June, 1892.

Chap. 8. An Act to confirm a certain agreement made between the Commissioners of the Queen Victoria Niagara Falls Park and the Canadian Niagara Power Company, and to enable the said company to carry the agreement into practical effect.



The Canada Southern Railway Company, by its petition addressed to your Excellency the Governor General in Council, allege that by an agreement entered into between the Commissioners for the Queen Victoria Niagara Falls Park and Messrs. Vanderbilt and Kingsmill, as trustees for the company, it was among other things stipulated that the view from Falls View Station, being one of the stations of the said company, should be kept open along the whole line from the monastery to the northern boundary of range 5, and that on the east of the railway only an open fence which would not in any way obstruct the view should be constructed; that this agreement was entered into for the purpose of settling litigation which had been for some time pending between the commissioners and the trustees for the company, and that the agreement was afterwards embodied in the judgment in the action, and has the force and effect of a decree of the court; that the said agreement and judgment are still outstanding and that the effect of the statute which confirms an agreement between the commissioners and the Canadian Niagara Power Company is to authorize that company to erect buildings which will interfere with the view from Falls View Station which has been secured to the railway company by reason of the said agreement and decree, and it is alleged that such obstruction to the view would be a serious injury to the railway company and interfere with the value of its property.

Assuming the statute to have the effect which the railway company attribute to it, the case would appear to be that of a statute which interferes with vested rights of property and the obligation of contract without providing for compensation and would, therefore, in the opinion of the undersigned furnish sufficient reason for the exercise of the power of disallowance.

In the correspondence which is annexed hereto and made part of this report, it is pointed out in support of the legislation, that the Act does not mention the railway company, nor refer to the view to which, by the agreement, that company is entitled; that the sole foundation for the petitioner's complaint is that the agreement between the commissioners and the power company authorizes the power company, for purposes specified, to erect buildings on such part of the specified locality as the commissioners may approve; that there is no pretense for saying that the building so to be erected must necessarily obstruct the view from the station; that the station is on the hill one hundred feet above the level of the park, and buildings of the required extent and height would not affect the view for which the railway company stipulated, and to which it claims to be entitled, and that the Act being in the nature of a private Act, to which the railway company is a stranger, does not admit of a construction which would affect the interests of such company by reason of the well known rule relating to the construction of private Acts of Parliament which in effect declares that private Acts of Parliament shall not bind persons not mentioned therein unless, by express words, or necessary implication, the intention of the legislature to affect the rights of such persons is apparent.

In this statement of the principle, whereby Acts of this character should be construed, the undersigned is disposed to concur, and for that reason, but for that reason only, he respectfully recommends that the Act should be left to its operation.

Chap. 10. "An Act for the Protection of the Provincial Fisheries."

By section 1 of this Act it is declared that the same shall apply only to fishing in waters, and to waters over or in respect of which the legislature of the province has authority to legislate for the purposes of this Act.

By section 2, it is further provided that the term "water or waters" or "provincial water or waters" shall mean and include such of the waters of any lake, river, stream or water-course wholly or partly within the province, as flow over or cover any crown lands, and over or in respect of which the legislature of the province has authority to legislate.

Section 5 provides that no tourist shall take, or catch or kill in any provincial water, or carry away a greater number than one dozen bass caught or taken in such waters in any one day.

Section 7 provides that no person shall take, or catch, or kill in any provincial water, or carry away the greater number than fifty speckled or brook trout on any one day.



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Section 8 provides that no person shall in such waters kill, or restrain, or carry away any speckled or brook trout of less than five inches in length.

Section 9 provides that no person shall at any time fish for trout, pickerel, or maskinongé in any such waters by any other means than angling by hook and line in such waters.

Section 12 provides that no person shall use dynamite, or any other explosive, or any poison for the purpose of taking or destroying fish.

Section 13 provides that no person shall fish for, catch, take or kill any kind of fish during the close season created under the laws or regulations of Canada, and imposes penalties for any violation thereof.

In the view of the undersigned all these provisions are infringements upon the exclusive power of the Federal Parliament to legislate on the subject of sea coast and inland fisheries. An arrangement has, however, been reached between the undersigned and the Attorney General of the province of Ontario by which the constitutionality of these provisions, as well as all other contentions respecting the fishery laws generally, are to be referred to the courts for adjudication, and as it does not appear that any public inconvenience will otherwise accrue, he respectfully recommends that the Act in question be left to its operation.

Chap. 42. An Act to consolidate the Act respecting Municipal Institutions.

In recommending that this Act be left to its operation, the undersigned must not be understood as indicating that all the powers and authority which by it are conferred upon municipal institutions in respect to their power of passing by-laws, are within the legislative competency of the provincial legislature.

Respectfully submitted.

J. ALDRIC OUMET,  
*Acting Minister of Justice.*

ONTARIO, 56TH VICTORIA, 1893.

3RD SESSION, 7TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th May, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th March, 1894.

*To His Excellency the Governor General in Council.*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Ontario in the fifty-sixth year of Her Majesty's reign (1893)—the chapters of which are contained in the annexed schedule—received by the Secretary of State for Canada on the 1st day of June, 1893, and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts, chapters 33, 45, 48, 49 and 93, have been reserved for a separate report.

The undersigned also recommends that, if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant Governor of the Province for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Schedule.*

Chapters 1 to 32, 34 to 44, 46, 47, 50 to 92, 94 to 117.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th May, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th March, 1894.

*To His Excellency the Governor General in Council :—*

The undersigned has the honour to report upon the following Acts passed by the legislature of the province of Ontario in the fifty-sixth year of Her Majesty's reign (1893) received by the Secretary of State for Canada on the 1st day of June, 1893, as follows :—

Chapter 33. "An Act for the better prevention of Fraudulent Statements by Companies and others."

This statute provides that any corporation, association, company, officer, agent or employee who publishes or circulates any advertisement, letter-head, postal card, account, or document which represents the capital of the company as of any larger sum than the amount of the subscribed capital actually subscribed in good faith or which contains any untrue or false statement as to the incorporation, control, supervision, management or financial standing of such corporation, association, or company, and which statement is intended or calculated or likely to mislead or deceive any person dealing or having any

business or transaction with the company shall upon summary conviction be liable to a penalty not exceeding \$200 and costs, and not less than \$50 and costs, and that in default of payment, the defendant being an officer, agent or employee as above mentioned shall be imprisoned with or without hard labour for a term not exceeding six months and not less than one month, and that on a second or any subsequent conviction he may be imprisoned with hard labour for a term not exceeding twelve months and not less than three months.

Chapter 45. "An Act for the Prevention of Cruelty to, and better Protection of, Children."

This statute creates a number of offences with regard to children, among others, that any person over sixteen years of age who, having the care, custody, control or charge of any child, wilfully illtreats, neglects or abandons, or exposes such child, or causes or procures such child to be illtreated, neglected, abandoned or exposed in a manner likely to cause such child unnecessary suffering or serious injury to its health, shall be guilty of an offence and liable upon summary conviction, to a fine not exceeding \$100, or alternatively or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months; that if, upon the trial of any person charged with any such offence it be proved that such person was interested in any sum of money accruable or payable in the event of the death of the child and had knowledge that such sum of money was accruing or becoming payable, the court may, in its discretion, increase the amount of the said fine so that the fine shall not exceed \$250, or increase the imprisonment with or without hard labour, to any term not exceeding nine months;—also, that any person who causes or procures any child to be in any street for the purpose of begging or receiving alms shall be liable upon summary conviction to fine and imprisonment.

Chapter 48. "An Act to prevent Fraud in the Sale of Milk."

This Act provides that any person who knowingly and fraudulently sells or supplies to any person any milk diluted with water, or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as "skimmed milk," or who knowingly or fraudulently sells or supplies to any person, milk that is tainted or partly sour, shall for every offence forfeit and pay a sum not less than \$1, or more than \$50 and costs; and it provides further that such penalty may be recovered by distress, and for imprisonment in default of payment.

It appears to the undersigned that provisions such as those referred to may be held to relate to the subject of criminal law, and, therefore, not to be within the legislative authority of provincial legislatures.

The undersigned considers, however, that the Acts should be left to their operation, leaving it to those persons who may desire to question their validity to assert their remedy in the courts.

Chapter 49. "An Act to amend and consolidate the Laws for the Protection of Game and Fur-bearing Animals."

By section 6, the exportation of game from the province of Ontario is forbidden.

The undersigned calls attention to this provision as relating to trade and commerce. He does not, however, consider the objection so arising, as of such a serious nature as to call for the exercise of the power of disallowance.

Chapter 93. "An Act to incorporate the Lake Superior and Algoma Co'lonization Railway."

Section 5 enacts that it shall be lawful for the company at any point where its railway approaches within two miles of any navigable waters to purchase and hold as its own absolute property and for the use of the company, wharfs, piers, docks, water lots, water frontages and lands, and upon such water lots, water frontages and lands, and in and over the waters adjoining the same, to build and erect elevators, store-houses, warehouses, engine-houses, sheds, wharfs, docks, piers and other erections for the use of the company, also to erect and maintain all moles, piers, wharfs and docks which may be necessary, and to dredge, deepen and enlarge such works.

The undersigned observes that these provisions can only have effect as regards rivers and harbours, and the foreshores thereof subject to the legislation of Parliament



regarding such waters and foreshores. The powers so granted may, however, be lawfully exercised upon complying with the requirements of the Dominion statutes, and the Act should, therefore, in the opinion of the undersigned, be left to its operation.

The undersigned, therefore, recommends that the several Acts mentioned in this report be left to their operation, and that a copy of this report, if approved, be sent to the Lieutenant Governor of the province for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## ONTARIO, 57TH VICTORIA, 1894.

### 4TH SESSION, 7TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 10th January, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st October, 1894.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Ontario in the fifty-seventh year of Her Majesty's reign (1894), the chapters 1 to 96 and 99 to 107, received by the Secretary of State for Canada on the 12th day of May, 1894, and he is of opinion that they are unobjectionable, and may be left to their operation.

The remaining Acts, viz., chapters 97 and 98, have been reserved for a separate report.

The undersigned also recommends that, if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant Governor of the province for the information of his government.

Humbly submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 10th day of January, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th December, 1894.

*To His Excellency the Governor General in Council.*

The undersigned has the honour to submit his report upon the statutes of the province of Ontario, passed in the fifty-seventh year of Her Majesty's reign (1894), received by the Secretary of State for Canada, on the 12th day of May, 1894, as follows :—

Chapter 97: "An Act to incorporate the Georgian Bay Ship Canal and Power Aqueduct Company." Section 11, amongst other things, purports to give the company power to divert and appropriate any stream, spring, river, lake or other source of water supply as it shall judge suitable and proper.

The undersigned observes that it would not be competent for a provincial legislature to authorize a company to divert or appropriate rivers which, under the "British North America Act" became part of the public property of Canada. It may not be intended, however, that the company shall divert or appropriate any such rivers, and if it should do so, the courts would have jurisdiction to determine the application and validity of the section in question.

Chapter 98: "An Act to incorporate the Ontario Burglary Insurance Company (Limited)." This statute incorporates a company for the purpose of insuring property against damage by reason of burglary or house-breaking. The authority to carry on business which it professes to confer upon the company, is general and not expressly limited to provincial purposes. The power conferred upon provincial legislatures with regard to the incorporation of companies is, by the "British North America Act," limited to the incorporation of companies with provincial objects, and it appears to the undersigned questionable whether the powers of this company, as stated in the statute, are not so broad as to exceed that limitation. The undersigned recognizing the authority of the courts to confine the business of the company within its legitimate scope, would not consider the case one for the exercise of the power of disallowance but recommends that it be called to the attention of the provincial government in order that the powers of the company may be so restricted, by amendment, as to confine them within proper limits.

The undersigned, therefore, recommends that the two statutes mentioned in this report be left to their operation, and that a copy of the report, if approved, be transmitted to the Lieutenant Governor of the province of Ontario, for the information of his government.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

# ONTARIO—58TH VICTORIA, 1895.

1ST SESSION, 8TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 11th November, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st October, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Ontario in the fifty-eighth year of Her Majesty's reign (1895), chapters 1 to 11, 14 to 31, 32 to 37, 39 to 47, 49 to 66, 68 to 96, 98 to 114, 117, 119, 120 to 127 ; received by the Secretary of State for Canada on the 27th day of April, 1895, and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts, chapters 12, 13, 32, 38, 48, 67, 97, 115, 116 and 118, are the subject of a separate report.

The undersigned recommends that if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor of the province, for the consideration of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th November, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report upon certain statutes of the legislature of the province of Ontario, passed in the fifty-eighth year of Her Majesty's reign (1895), assented to on the 16th day of April, 1895, and received by the Secretary of State for Canada on the 27th day of April, 1895.

As to chapters 12 and 13, intituled respectively :—

Chapter 12.—An Act to consolidate the Acts governing the Supreme Court of Judicature of Ontario," and

Chapter 13.—"An Act diminishing Appeals and otherwise improving the procedure of the courts."

The undersigned would call attention to sections 131, 139, 153, 180, 182, 183, 184 of the former and section 40 of the latter Act.

These sections provide for the payment of fees by litigants, by means of law stamps and otherwise, which are to go to the consolidated revenue fund of the province and are apparently intended to be applied in payment of officers' salaries and otherwise, in aid of the administration of justice within the province. It has been established that such is not a direct method of taxation, and therefore not within the authority of a provincial legislature under the power conferred, to raise revenue for provincial purposes by direct taxation within the province, and it may be doubtful whether a province has the power to raise a special fund in this manner, for the maintenance of the administration of justice in the provincial courts. The question is doubtless one of considerable



consequence to the provinces. Similar enactments have been allowed to go into operation in the province of Ontario as well as some of the other provinces.

The undersigned does not consider that the doubt which may exist as to the validity of these provisions is such as to call for the exercise of the authority vested in your Excellency in regard thereto.

The attention of the undersigned has been directed to section 8 of chapter 12, which purports to fix the precedence among themselves, of the chief justices and justices of the Court of Appeal and the High Court of Justice. The provision is not new, it being a re-enactment of section 7 of chapter 44 of the Revised Statutes of Ontario, 1887, and the latter section being a consolidation of the then existing statutory law on the subject. A section to the same effect appeared in the Ontario Statutes of 1874, and at that time the Minister of Justice called attention in a report, dated 18th November, 1874, to the question of the constitutionality of the provision, claiming that the question of rank and precedence of functionaries appointed by the Crown was a matter which could be dealt with solely by the Crown, as represented by the federal government. This report was forwarded to the Ontario government, and a reply was received from the Provincial Secretary, dated 6th October, 1875, transmitting an Order in Council approving a report of the Attorney General of Ontario dealing with this and other matters referred to in the report of the Minister of Justice, in which it is stated that the precedence of judges among themselves is a matter to be regulated by provincial legislation in respect of "the constitution of the courts." The undersigned observes that the right of precedence among the judges is not necessarily a part of the constitution of the courts, nor does it appear to him that such right is so incidentally connected therewith, as to confer jurisdiction under that head upon a provincial legislature, and the undersigned therefore considers that the authority of the province to enact the provisions in question is not by any means free from doubt. The question, however, is not, in the opinion of the undersigned, of such practical importance as to warrant him in advising that the power of disallowance should be exercised.

It is also enacted by section 185 of chapter 12 that, except in the county of York, the judges of the several county courts shall be judges of the high court for the purposes of their jurisdiction in actions in the high court, and they may be styled "local judges of the high court."

The appointment of judges for superior, district and county courts in each province being vested in your Excellency, it is not competent for a provincial legislature to make such appointments. The practice has hitherto been, where a provincial legislature has constituted the office of local judge of a superior court, and declared that the county court judges shall exercise the jurisdiction conferred upon such local judges, for your Excellency to issue commissions to such county court judges, appointing them to the office which, under the provincial statute, they are qualified to fill.

The section in question appears to be merely a re-enactment of a previous one, and if the practice formerly existing be continued, there could be no doubt as to the authority of judges so appointed to exercise the jurisdiction which is intended to be conferred.

Chapter 38: "An Act respecting Electric Railways."

Chapter 67: "An Act respecting By-laws Nos. 680 and 772, of the City of Hamilton."

Chapter 97: "An Act to incorporate the Grand Valley Railway Company."

Chapter 115: "An Act to incorporate the Windsor, Amherstburg and Lake Erie Railway Company."

Chapter 118: "An Act to incorporate the Sault Ste. Marie Pulp and Paper Company."

These are chapters providing for the incorporation of companies, or enacting provisions applicable to certain companies, and each chapter contains a section declaring in effect that aliens may be shareholders and office holders in such companies, with the same rights as British subjects. Exclusive legislative authority with regard to aliens having been committed to Parliament, it would appear to the undersigned that it is beyond the authority of a provincial legislature to legislate so as to affect their rights. Any

question which might arise with regard to these sections may, however, be conveniently determined by the courts, and the undersigned does not consider that at present they call for anything further than the foregoing comment.

Chapter 38 also contains the following sections :—

“Sec. 128. If the railway, when not passing along the public highway, is carried across a navigable river or canal, the company shall leave open a swing-bridge or draw-bridge, between the abutments or piers of their bridge or viaduct over the same, and shall make the same of such clear height above the surface of the water, or shall construct such draw-bridge or swing-bridge over the channel of the river, or over the whole width of the canal, and shall be subject to such regulations as to the opening of such swing-bridge or draw-bridge as the Lieutenant-Governor in Council from time to time may determine.

“Sec. 129. It shall not be lawful for any such company to construct any wharf, bridge, pier or other work, upon or over a navigable river, lake or canal, or upon the beach or bed, or lands covered with the water thereof, until they have first submitted the plan and proposed site of such work to the Lieutenant-Governor in Council, and the same has been by him approved ; and no deviation from such approved site and plan shall be made without his consent.”

Those sections may be construed as intended to vest in the companies to which they apply, so far as the provincial legislature has power to do, corporate powers to execute works of the character and in the manner therein mentioned, and they may properly have effect to that extent, but the undersigned observes that the powers mentioned could not be lawfully exercised, without the proceedings which have been required by Parliament in respect to the construction of works in navigable waters, and it could only be upon obtaining the approval of your Excellency in Council for the works contemplated, that the companies could competently construct such works.

As the construction suggested would leave room for the operation of these sections without conflicting with any existing Dominion legislation, the undersigned is of the opinion that they may be properly left to their operation.

Chapter 48. “An Act for the prevention of Fraud in the sale of Fruit.”

The main object of this chapter is to constitute offences and establish penalties in respect to fraud in the packing and sale of fruit, and it appears to relate rather to the subject of criminal law, than to any matter of legislation which has been committed to the province. The provisions of the statute in themselves however, appear just, and intended, if upheld, to have a beneficial effect. The undersigned considers, therefore, that the question as to the validity of the Act may properly be left to be raised in the courts, by any individual who may be in a position to do so.

Chapter 116. “An Act to incorporate the Algoma Dry Dock Company.”

Section 2 provides that the company shall have power, among other things, to construct, utilize and operate on the property of the company, dry docks and marine railways connected therewith, elevators, warehouses, piers, wharfs and slips, and to dredge or deepen harbours or basins.

This provision is subject to observations made with regard to sections 128 and 129 of chapter 38. It is subject to the further remark, so far as harbours or basins are concerned, that public harbours are, by the British North America Act, a part of the public property of Canada, and therefore not subject to provincial legislation. For the reasons stated with regard to the former sections, however, and also in view of the fact that a question of right raised by the province as to the property of the Dominion in public harbours, is now awaiting determination in the courts, the undersigned considers that this is not a case for the exercise of the power of disallowance.

The undersigned recommends therefore that the several Acts mentioned in this report be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*



*Report of the Honourable the Minister of Justice approved by His Excellency the Governor in Council on the 2nd December, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th November, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that chapter 32 of the statutes of the legislature of the province of Ontario passed in the 58th year of Her Majesty's reign (1895) assented to on the 16th April, 1895, and received by the Secretary of State for Canada on the 27th April, 1895, intituled :

Chapter 32. "An Act respecting Chartering of Trust Companies" has been made the subject of an application for disallowance.

The Act provides that "no company shall hereafter be incorporated, or otherwise authorized, by letters patent to execute the office of executor, administrator, trustee, receiver, assignee, guardian of a minor's estate, or of committee of a lunatic's estate, and no letters patent shall be granted to any company heretofore incorporated conferring any such powers upon such company, without in either case such company having complied with the provisions of this Act, in addition to what is required in other cases by 'The Ontario Joint Stock Companies' Letters Patent Act.'"

It is further enacted that at least three-fourths of the stock of the company, exclusive of the stock held by companies, must be held by residents of the Province of Ontario ; that notice of the application for letters patent must be served upon every trust company previously incorporated by the legislature of Ontario within three days after publication of the notice of application in the Ontario Gazette ; that the capital stock of the company shall be at least \$100,000 ; that previously to the issue of any letters patent the fitness of the applicants for the discharge of the duties appertaining to such trust, that the same is such as to command the confidence of the public, and also that the public convenience and advantage will be promoted by granting the letters patent, shall be established both to the satisfaction of the provincial secretary or some other member of the executive council, or other officer appointed for that purpose and to the satisfaction of the Lieutenant-Governor in Council ; that the Lieutenant-Governor of the province may grant by letters patent to any trust company to which the Act applies, the powers mentioned in the schedule or any of them, and finally, that the Act is to be read as part of the Ontario Joint Stock Companies' Letters Patent Act.

The powers mentioned in the schedule which may be so granted by letters patent include the power to take, receive and hold estates and property real and personal upon trust ; to take and receive on deposit valuable papers or securities for money, jewellery, plate or chattel property and to guarantee the safekeeping thereof ; to act as attorney or agent for the transaction of business, the management of estates and the collection of moneys ; to receive, invest and manage any sinking fund ; to accept and execute the office of executor, administrator, trustee, receiver or assignee ; to guarantee investments, and other powers of a like nature.

Subsection 1, section 3, of the Ontario Joint Stock Companies' Letters Patent Act, as amended, reads as follows :—

"In case a corporation, now or hereafter incorporated under the laws of the Imperial Parliament of Great Britain and Ireland, or of the Dominion of Canada, or any province thereof, desires to carry on any of its business within the province of Ontario, the Lieutenant-Governor in Council may, by letters patent under the great seal of the province, grant to such company, and such company may use, exercise and enjoy within the province, any powers privileges and rights set forth in the letters patent, as desired in, or for carrying on the business of the company, and which it is within the authority of the Lieutenant-Governor in Council to grant to a company under this Act.



It is urged that this section, which has to be read with the Act in question, not only authorizes the Lieutenant-Governor in council to confer by letters patent upon companies incorporated by the Parliament of Canada, the powers and privileges set forth in such letters patent, but also by implication declares that no company so incorporated shall exercise within the province of Ontario, the powers conferred by its charter, unless authorized to do so by letters patent of the Lieutenant-Governor in council; also that the Act under consideration is intended practically to prohibit any company chartered by or under authority of the Parliament of Canada for the purpose of exercising the powers mentioned in the schedule, from transacting business within the province unless authorized by provincial letters patent, because the requirement that three fourths of the shareholders shall be resident in Ontario would not be satisfied generally in the case of Dominion companies, and because the difficulty of satisfying as a matter of preliminary condition any particular individual who might be selected by the lieutenant-governor in council, as well as the latter body, of the several particulars mentioned in sections 7 and 8, would be such as to render it virtually impossible to comply with the provisions of the Act.

The undersigned has given very careful consideration to these representations, but is unable to conclude that the Act is intended to have any effect as to the companies lawfully incorporated by the Parliament of Canada for the purpose of transacting business of the character mentioned in the schedule. It is perfectly clear that the Ontario legislature, in declaring that no company shall, without complying with certain provisions hereafter, be incorporated or otherwise authorized by letters patent to execute certain powers which are within the authority of the legislature to confer, cannot be held to have intended to refer to companies other than such as are within its legislative jurisdiction, and the undersigned cannot read subsection 1 of section 3 of the Ontario Joint Stock Companies' Letters Patent Act above quoted, as by any implication forbidding a Dominion company to exercise within the province the powers lawfully conferred upon it by parliament. The section seems rather intended to enable the Governor in council to confer, where deemed necessary, additional powers upon companies incorporated outside the province, such as are not already vested in such companies by charter, or such as are not otherwise recognized by the law of the province. If the legislation would admit of the construction which is stated as the foundation for complaint, it would doubtless furnish a proper subject for consideration with a view to disallowance, but even then in the absence of an express prohibitory provision the comments of the late Minister of Justice upon the Acts of the legislature of the province of Quebec, 49-50 Victoria, chapter 39, intitled "An Act to authorize certain corporations and individuals to loan and invest moneys in the province" would appear to have application. The following is an extract from the report of the late minister upon the latter Act, dated 16th July, 1887:—

"The undersigned would recommend the disallowance of the statute, were it not for one view which has not been presented in the dispatch of his honour the Lieutenant-Governor. While it gives authority to the provincial secretary to issue the license to the companies referred to, and professes to convey authority to any such company to do business after obtaining such a license, it does not contain any negative provision forbidding any such company to do business without obtaining such license, nor does it establish any penalties to be enforced against the companies so incorporated and engaging in business without obtaining the license.

"The Act therefore seems incapable of doing harm, or of obstructing the operations of companies duly authorized and doing business within the scope of their lawful authority, excepting in so far as it may raise doubts as to the necessity for such a license.

"The companies affected may therefore be left to test, as they may think proper, the validity of the Act, before the courts, and no such inconvenience is likely to arise as would call for the exercise of the power of disallowance."

The practical difficulties which applicants, who come under the operation of the Act would have to overcome, in satisfying the several preliminary conditions, are such as

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the provincial legislature in its wisdom has within its undoubted authority seen fit to impose. The provisions establishing such requirements have no retroactive effect, nor do they prejudice vested interests, and the undersigned, therefore, does not consider that they properly call for comment here. If the conditions are unduly onerous the remedy is with the legislature.

For the reasons mentioned, the undersigned recommends that the Act be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

QUEBEC, 31ST VICTORIA, 1868.

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1ST SESSION—1ST PARLIAMENT.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th July, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th June, 1868.

*To His Excellency the Governor General in Council :*      • •

With reference to the Imperial "British North America Act, 1867," and also to the Order in Council of the 9th instant on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report :

That he considers the Acts mentioned in the annexed schedule passed by the legislature of the province of Quebec, in the first session thereof to be free from objection of any kind.

He therefore recommends that the same be respectfully left to their operation.

JOHN A. MACDONALD.

*Schedule.*

Chapters 1 to 13, 15 to 23, 26 to 36, 38 to 45, 48 to 59.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th July, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st July, 1878.

*To His Excellency the Governor General in Council :*

In reference to the following Acts passed by the legislature of the province of Quebec at its late session, the undersigned has the honour to report as follows :—

The second section of chapter 14 legislates on the subject of bankruptcy, by extending the several Acts of the late province of Canada on the subject, for a further period. This, in the opinion of the undersigned, is beyond the jurisdiction of the local legislature of Quebec, and he recommends that the attention of the provincial government be called to it.



The undersigned would suggest that this Act should be amended, expressly limiting the powers of the companies to be established under it, to the limits of the province of Quebec.

The 8th subsection of the second clause legislates on the subject of fisheries, which seems by the Union Act to belong to the Parliament of the Dominion. That portion of the subsection which authorizes the incorporation of companies for the purpose of carrying on business in the waters *adjacent* to the province, and therefore not *in* the province, would especially appear *ultra vires*.

The same remarks that are made on chapter 24 are applicable to the second section of this Act.

The undersigned would also suggest that the attention of the government of Quebec be called to the expediency of expressly limiting the 14th clause of chapter 37 to procedure in Recorders' Courts, relating to municipal matters; all legislation relating to proceedings in criminal matters appertains to the general Parliament.

All of which is respectfully submitted.

JOHN A. MACDONALD.

*Chief Engineer Public Works to Secretary Department of Public Works.*

OTTAWA, 7th December, 1868.

SIR,—I have the honour to acknowledge the receipt of your letter drawing attention to certain inquiries made by the Honourable the Minister of Justice, relative to the probable effects of the work proposed to be constructed by a company, at or near the Lachine Rapids, in the River St. Lawrence.

With a view of placing the matter fully before the department, it is deemed proper, first, to give a brief statement of the leading points contained in the documents, which have been submitted both for and against the scheme, together with reference to other papers bearing on the subject.

It appears that a number of gentlemen, residents of Montreal and other parts of the province of Quebec, are desirous of being incorporated under the name of "St. Louis Hydraulic Company, for the purpose of carrying on the business of creating water power for driving of mills and machinery, by the construction of dams, sluices and other mechanical appliances, and of leasing or selling the same."\*

The place where they propose engaging in this business, is at or near that part of the River St. Lawrence known as the Lachine Rapids, and in the vicinity of Montreal.

They represent, having made an arrangement for "the undivided half or moiety of that certain sief, in the district of Montreal, know as l'Isle au Héron, in the River St. Lawrence, near the St. Louis or Lachine Rapids," &c., &c. In confirmation of this, a copy of a notarial document, dated 4th December, 1866, is submitted, from which it appears that the transfer of the "undivided half of l'Isle au Héron" has been made conditional—that is to say, in case the company be not incorporated and chartered, or of its failing to carry out the terms of the arrangement, then a reassignment of the property is to be made to the original owner, or person who made the transfer.

On a memorial setting forth the objects proposed to be effected by the company, an Act of incorporation was passed at the last session of the legislature of the province of Quebec, authorizing a joint stock company to be formed, with power to take possession of part of the bed and beach of the St. Lawrence, to purchase, acquire and hold lands for canals, roads, ditches, &c., and construct a dam between the Isle au Héron and the north shore of the river.

"The several clauses of chapter 66 of the Consolidated Statutes of Canada, under the several heads of *Powers, Plans and Survey, Lands and their valuation, and Fences*, shall be incorporated with this Act," &c., &c., &c.

The company to have a capital stock of two millions of dollars, with power to increase that amount if deemed proper. The charter to be forfeited if the company do not go into actual operation within three years. The construction of the works not to be commenced until one million dollars of the capital stock is subscribed, nor until one hundred thousand dollars shall have been paid up.

This Act or bill was, however, reserved for the royal assent.

Since the bill was passed by the legislature of Quebec, several memorials have been presented to his Excellency the Governor General, praying, for various reasons therein stated, that it be disallowed, viz. :—

1st. From W. J. Knox and Robert Knox (18th March, 1868), owners of mills at the Lachine Rapids, representing, that by the bill, the "St. Louis Hydraulic Company" would have the power of constructing works, which would destroy the water-power owned by them, the memorialists.

That the company would have the right of acquiring a large amount of property that would prevent the carrying out of a scheme, which had been in contemplation for the last *thirty* years, for the further development of the water-power, &c., &c.

2nd. From F. B. Mathews (21st March, 1868), owner of the undivided half of Isle au Héron, praying that his property may not be taken possession of against his will, for the benefit of a private company, &c.

3rd. From Hugh Fraser, and eighteen others, proprietors of land lying on the north shore of the River St. Lawrence, between Montreal and Lachine (23rd March, 1868), praying that assent to the bill be withheld, inasmuch as the passage of a law, giving private individuals and speculators the right to take property of their neighbours, at their own valuation, would tend to destroy the security hitherto enjoyed by the inhabitants of the country in their titles to lands, &c., &c.

The petitioners also state, that they believe the bill, "in its present shape, to be unconstitutional, for various reasons, and amongst others those recapitulated in the *exposé* or *factum* hereunto annexed, and respectfully submitted," &c., &c.

The document thus referred to is headed, "Statement of the grounds on which it is contended that the bill to incorporate the St. Louis Hydraulic Company, passed by the parliament of the province of Quebec, but reserved for the royal assent, should not be passed."

In this paper the principal features of the bill are discussed, and reasons assigned why it should be disallowed.

This document seems to have been ably and carefully prepared; and, as a whole, is well worthy of consideration.

There is also a memorial (dated 17th March, 1868), signed by 231 persons, chiefly residents of Montreal, to his Excellency the Governor General, praying that the bill may be *assented to*, inasmuch as the carrying out of the proposed undertaking would secure to Montreal an unfailing supply of pure water, and create an immense amount of invaluable water-power for general use, &c., &c.

In this connection it may be stated that an Act was passed in 1861 (24 Vic., cap. 96), intitled: "An Act to incorporate the Montreal Hydraulic and Dock Company." By the 3rd section of this Act, the company are empowered to make a canal and conduct water from some point on the River St. Lawrence, within seven miles from the city of Montreal, for the use and supply of the said docks, or for hydraulic or manufacturing purposes.

By the 5th section, the company has the power to lease or sell water-power for mills, manufactures, &c., &c., but none "of the provisions in this Act mentioned as to taking possession of, and entering upon lands, shall apply to lands to be purchased along the canal supplying the said water-power, which lands shall only be acquired by voluntary contract and agreement."

By the 45th section, the powers of the company are to cease if their works are not commenced within three years, or are not finished, or put in operation, within ten years from the passing of this Act.

The Act shows that the scheme was looked upon as consisting of two (distinct) parts, the principal one, or that connected with navigation, being considered as essentially a



public work, whilst that relating to water-power was viewed and treated as a private undertaking.

It is believed that the proposed canal was to have been supplied with water from a point above the Lachine Rapids, where the river is naturally of a height suited to the purposes contemplated.

It appears from the Acts passed previous to 1859, that the Public Works Department had no power to acquire land as a site for water-power or other hydraulic purposes, except in the usual manner of voluntary agreement with the owner, although invested with full power to take possession of all such lands as were necessary for works essentially of a public nature.

But, in 1859, an Act was passed (22nd Vic., cap. 3), intituled: "An Act to amend and consolidate the several Acts respecting the Public Works." By the 31st section, the commissioner may at all times "acquire and take possession of all lands, or real estate, streams, waters and watercourses, the appropriation of which for the use, construction and maintenance of hydraulic privileges, made or created by, from, or at such public works, is in his judgment necessary, &c." In "An Act respecting the Public Works of Canada," passed in 1867 (31st Vic., cap. 12), the powers relating to the acquirement of land are similar to those described in the Act of 1859.

It, therefore, appears that previous to 1859, the Department of Public Works was not invested with the power of taking possession of lands for the water-powers, which even the construction of the provincial canals had created.

The exception then made in favour of the department, was not, however, in 1861, extended to the "Montreal Hydraulic and Dock Company," in so far as related to that portion of their project which had for its object the formation of mill privileges.

Notwithstanding the magnitude of the scheme now under consideration, and its great public importance, if it should be successfully carried out, its chief aim is similar to that part of the "Montreal Hydraulic and Dock Company's" project, from which the power of expropriation was withheld.

It may, therefore, fairly be questioned, whether such powers could judiciously be conceded to the "St. Louis Hydraulic Company."

The (231) memorialists in favour of the projected undertaking, gave, as their principal reason for supporting it, that it would have the effect of "permanently securing, for the city of Montreal an unfailing supply of pure and wholesome water."

On examining the plan submitted by the company, it appears that the water above the proposed dam is intended to be raised eighteen feet, and kept at a height of about thirty feet over ordinary low water mark in the harbour of Montreal, and in this way it is alleged the desired object will be effected.

A memorandum, explanatory of the design, shows that "during a portion of last winter (1867) a natural dam of ice was actually formed across the lower end of this channel, and raised the water above it to about the level which will be attained when the permanent dam is constructed, &c., &c."

A record of the water-levels, kept by the superintendent of the Montreal water-works, shows that during the period above alluded to, viz., the 16th, 17th and 18th of January, 1867, the water at the site of the proposed dam stood at a height of 30.37 feet above datum, or fully four inches above the level to which it is intended to raise the water above the dam.

During the remaining portion of the month of January, it varied from 29.74 to 29.97, and averaged 28.76 feet above datum, giving for this time a mean fall of 1.24 feet at the site of the dam, when the level above is maintained at 30 feet as proposed,

In the month of February it ranged from 28.97 to 24.63 feet, averaging 26.58 feet over datum, and giving for this period a mean fall of 3.42 feet at the dam.

From the 1st to the 21st March the average level was 25.61 feet over datum, giving a mean fall at the dam of 4.39 feet.

The general average of the daily levels from the 19th January to the 21st March, 1867, gives a mean fall of 3.31 feet.



Although the water was backed up, in 1867, to a greater height on this point on the St. Lawrence, than is usually the case, the phenomenon is more or less of annual occurrence; so that, in ordinary seasons, during the greater parts of the months of January, February and March, there is not a fall of more than from 4 to 6 feet, under the assumed level at the place where the dam is proposed to be built.

Any opinion given as to the probable effect which the construction of a permanent dam would have on the ice-jam below, must, of necessity, be mere conjecture; it being quite as likely that the height of back water, hitherto experienced, might be augmented, as that it would be diminished; in fact, the result is something which cannot be foreseen or calculated upon, with the slightest degree of certainty. From the facts above stated, it appears, that for a considerable portion of every winter (ice-jams and back-water continuing as heretofore), there would practically be no available pumping power to effect the object, for which the memorialists mainly recommend the scheme; nor, indeed, a sufficient head of water to drive machinery suitable for manufacturing or milling purposes.

In the memorandum submitted by the company it is stated, "That the erection of this dam will be followed by the packing back of the water on the lake above, &c., &c." and the probable rising of the lake level with its tributary streams. This view of the matter is doubtless correct. By closing up the north branch of the river, all the water would be forced into the south channel, where it would have to pass in a space of much less width than that at present occupied by the river, which would, of course, cause an elevation of the surface level above.

This increased height of the surface would, doubtless, bear some proportionate relation to the section of the river closed, and would be such as to give the water a fall sufficient to produce a velocity which would carry off the whole natural flow of the river.

The height, or distance up stream to which the rise would be experienced, it would be all but impossible, under any circumstances, to determine correctly in advance. But, from the class of information submitted on the part of the company, no "data" whatever is afforded on which to base any opinion relating to these important points.

Indeed, when the magnitude of the river, the set of the rapids, and the irregularity of the channel at this place is considered, it seems doubtful whether such details and *formule* as are applicable to ordinary streams, would be anything like a safe guide in attempting to form an opinion of the results likely to ensue from the construction of the proposed works.

The banks of the river below Lachine, on the north side, and below Caughnawaga, on the south side, are understood to be so high, that they are unlikely to be flooded to any great extent.

There is reason, however, to apprehend that a permanent rise in Lake St. Louis would, during periods of high water, result in considerable damage to several low islands in the lake, and to tracts of low lands along its shore.

The streams which now drain the surrounding country might also form channels for conveying water into the interior. Thus the property of a large number of persons in no way connected with the enterprise would, in all probability, be injuriously affected; and possibly to an extent which, when fully ascertained, might prove to be a serious, if not unexpected, drain on the means of the company.

There is no doubt that, could the proposed undertaking be successfully accomplished, it would greatly advance the manufacturing interests of Montreal, and prove to be a source of immense benefit to the whole community.

Nevertheless, a project where so many individual interests are at stake, and which is open to such serious objections, should not be entertained, unless it can be clearly shown that it is the best, if not the only way, of effecting the object.

An enterprise of this kind, to be really successful, should be so situated that the power is as little as possible liable to variation, or interruption. This, it has been shown, is unlikely to be the case, with water-powers formed in the vicinity of Isle au Hérion.

It is, however, quite evident that the River St. Lawrence, between Montreal and Lachine, can supply a very large amount of "unfailing" water-power; but in order to secure this, the water must be drawn from the river at a point considerably higher than

the place selected by the St. Louis Hydraulic Company. That is to say : If, from some point within a few miles of Lachine, a canal of large dimensions were constructed, at such a distance from the margin of the river as circumstances required, an almost unlimited number of "unfailing" water-powers might be formed.

In this way the probable extent of damages could be foreseen and provided for, the risk of flooding of lands avoided, and the hazardous experiment of blocking up a large section of a river of such magnitude as the St. Lawrence rendered unnecessary.

I have, &c.,

JOHN PAGE,  
*Chief Engineer, Public Works.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th January, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th January, 1869.

The undersigned, to whom was referred the despatch of the Lieutenant-Governor of the province of Quebec, of the 28th February last, inclosing a bill, which he had reserved for the assent of the Governor General, intituled : "An Act to incorporate the St. Louis Hydraulic Company," has the honour to report :—

That this company is proposed to be incorporated for the purpose of creating a water power, by the erection of a dam across the River St. Lawrence, running between Isle au Héron and the northern bank of the river.

The bill was reserved for your Excellency's assent, on the report of the Attorney General for Quebec, that, in his opinion, the second clause of the Act, which authorizes the construction of this dam, appeared to fall within the powers of the Parliament of Canada, under the 10th paragraph of the 91st section of the Union Act.

As it is a matter of national importance to preserve the navigation of the greatest river in the Dominion from being obstructed, and, as it was the opinion of some professional men, that the erection of the proposed dam would not only injuriously affect the navigation of the river, but cause great injury to property on or near its banks, the undersigned thought it expedient that a report should be obtained from the Chief Engineer of the Department of Public Works on the subject. That report, a copy of which is hereunto annexed, was received by the undersigned on the 24th ultimo.

The whole tenor of this report shows that Mr. Page apprehends that the projected work would cause serious changes of a prejudicial character in the navigation of the river, and might be the means of injuring private property to an extent which cannot now be calculated.

After such a report, and without reference to the constitutionality of the Act, the undersigned is of opinion that it would not be safe, in the public interests, to allow this bill to become law.

He therefore recommends that your Excellency's sanction be not given to it, and that your decision, together with a copy of Mr. Page's report, be transmitted to the Lieutenant-Governor of Quebec for his information.

All which is respectfully submitted.

JOHN A. MACDONALD.

*Memorandum submitted by the Secretary of the Province of Quebec respecting the Statutes of the Province of Quebec of 1868.*

On the Act 31st Vic., cap. 14, it is suggested that clause 2 "legislates on the subject of bankruptcy," inasmuch as it continues in force several Acts of the province of Canada on that subject for a further time.



At the time this Act was passed, the continuing Act of the Parliament of the Dominion was still unpassed, and, as the temporary Acts in question applied only to procedure in any possible cases still pending, wherein commission of bankruptcy had issued before the 30th May, 1849, it was not clear, but that the question was rather of "procedure in civil matters," than of bankruptcy within the purview of the Constitutional Act. In the doubt as to which view might prevail in Ottawa, it seemed prudent to save the Acts, in so far, at least, as they might be held regulative of civil procedure, by enactment here. Parliament has since confirmed them by the Act 31st Vic., cap. 20, in so far as they may be held regulative of bankruptcy proper; and their continued validity cannot, from any point of view, be questioned.

Perhaps it might be better to let them formally expire, enacted only, once for all, that such expiration shall not affect procedure in any wise, in any case pending under commission issued before the 30th May, 1849, as to which only they should remain in full force.

Whether this be done, or the Acts kept in the continuing Act, there is probably no need for concurrent action of the legislature with Parliament, and it is, therefore, not proposed here to legislate further in reference to them, unless at the instance of the Government of the Dominion, for the avoidance of the doubt above suggested.

On the 31st Vic., cap. 24, three suggestions are made:—

1. That it "be amended, expressly limiting the powers of the companies to be established under it, to the limits of the province of Quebec."

This Act is not one under which companies are to be established, but merely a General Clauses Act, applying to companies to be established under special Acts.

Taking the suggestion to mean, that another general clause to the above effect should be added to those contained in the Act; the answer seems obvious, that such proposed limitative declaration either is law already, and, therefore, need not be enacted, or is not law, and, in that case, ought not to be; whether it is law or not, may be said to depend on the sense given to the words used. Companies incorporated under a provincial Act can have no right to recognition out of their province, as there capable of acting, unless in so far as the court under the laws there, may freely accord it; nor even in their province, as capable of acting out of it, in contravention of any power prohibitive, or restrictive law, or public policy there subsisting, and in that sense their powers may be said to be limited to their province. But for a province to go further, and assume to set a limit in express words which may mean that they are absolutely incapable of contracting, or at all operating out of the province, could not well be thought. Under such a restriction, the power to incorporate, would hardly subsist for any practical end.

2. That subsection 8 of clause 2, legislates on the subject of fisheries, which seem, by the Union Act, to belong to the Parliament of the Dominion.

All it does is to make the general clauses apply to all companies to be created by future special Act, for carrying on fisheries. But this is not legislating on the subject of fisheries. If, indeed, any of the general clauses interfered with any possible fishery legislation of Parliament, or fishery law of any kind, the case may be different; although then the objection would be to such clauses, not to this subsection, but in fact they do not. Incorporating companies to carry on fisheries is no more legislating on fisheries than incorporating companies to hold and navigate ships is legislating on navigation and shipping; or than incorporating companies for either of these, or for trading purposes, is legislating on trade. The objection, if good at all, would hardly leave the provinces power to incorporate companies at all.

3. That so much of this subsection as authorized the incorporation of companies for the purpose of carrying on business in the waters adjacent to the province, and, therefore, not in the province, would specially appear to be *ultra vires*.

As already remarked, there is nothing in this Act authorizing incorporation of companies at all. It merely affects such companies as the legislature may otherwise create. Till it shall have exceeded its powers, the fair presumption is that it will not.

At the same time, the words qualifying the phrase, a "fishery or fisheries," to the end of the second line of this subsection, are of no value, and were, in fact, retained, by mere inadvertence, from the Act of Canada on which this Act was framed.



It would be well to amend the Act by striking them out. The appearance of laying down one special rule as to the local powers of this particular class of companies, would thereby be avoided.

On the Act 31st Vic., cap. 25, which is for incorporation of companies by letters patent, the same three suggestions are made :

1. To the suggestion of an express limitation of the powers of the companies so to be incorporated, a sufficient answer (it is submitted) has been given.

2. To the objection on the ground of fishery legislation also, the answer above made, seems sufficient.

3. As to the words after "fishery or fisheries," in the first and second lines of subsection 8 of clause 2 in this Act, it is admitted that they purport to authorize incorporation of companies within the geographical limits indicated, and which limits extend beyond those of the province. As already stated, they were retained from mere inadvertence, and might be well struck out in this Act, as well as in chapter 24.

On the Act 31st Vic., cap. 37, it is suggested that clause 14 should be limited "to procedure in Recorders' Courts relating to municipal matters, as all legislation relating to procedure in general matters to the general Parliament."

This Act does not relate to Recorders' Courts generally, but only to that for the city of Montreal. And the limitation proposed "to municipal matters" would not answer, as the jurisdiction of the court, in matters not properly criminal, extends to other than merely municipal matters.

The Act was passed under some pressure for time, at the instance of the corporation of the city of Montreal.

It is thought that the corporation were right in their view as to the expediency of the simplification of procedure in this court, provided for by this clause. But it was, no doubt, in error, that the simplification purports to be thereby enacted, in respect of so much of that procedure, as is properly criminal.

The proper course would seem to be for the corporation, or the provincial government, to obtain at the hands of Parliament the requisite legislation in this behalf. Should this be refused, it will become a question whether the clause, as a whole, may not have to be repealed, to avoid the inconvenience likely to arise from the concurrent subsistence of two procedures, and the doubts and mistakes likely to result from it.

PIERRE J. O. CHAUVEAU,  
*Secretary of the Province of Quebec.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 5th February, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd February, 1869.

The undersigned has the honour to make the following report on the memorandum transmitted by the Secretary of the province of Quebec to the Secretary of State for Canada, on the 20th ultimo; such memorandum being on the subject of certain Acts passed in the last session of the legislature of the province of Quebec, respecting which a correspondence has been going on.

31st Vic., cap. 14.—The suggestion made in the memorandum, that the Act in question shall be allowed to expire at the end of the next session, so far as it affects the law of bankruptcy, is, in the opinion of the undersigned, the best mode of getting out of the difficulty.

31st Vic., cap. 24; 31st Vic., cap. 25.—The suggestion also made, as to the propriety of amending these Acts, is also satisfactory.

31st Vic., cap. 37.—The course proposed to be adopted with reference to this Act is also satisfactory, and the provincial government is requested to see that the Act in question be amended in accordance therewith.

JOHN A. MACDONALD.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd February, 1869.*

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DEPARTMENT OF JUSTICE, OTTAWA, 19th February, 1869.

In reference to the following Acts passed by the legislature of the province of Quebec, in the first session thereof, the undersigned has the honour to report as follows :—

31st Vic., cap. 46.—This Act seems objectionable on two grounds.—*First*, That it authorizes the obstruction of the River Richelieu; and as, by the “British North America Act, 1867,” rivers seem to be the property of the Dominion, it would appear, from a constitutional point of view, that the Act should be passed by the Parliament of Canada.

*Secondly*, That the dam authorized by the Act is to be erected in the vicinity of the government canal, and that the backwater will interfere with the navigation of those canals.

The attention of the government of Quebec is invited to the propriety of having this Act repealed.

31st Vic., Cap. 47.—This Act incorporates the Canada Marine Insurance Company, and the second clause gives it power and authority, within the limits of the province of Quebec, to make insurances, among other things, against loss by the perils of navigation to any vessel, either sea-going, or navigating the lakes or rivers.

Now, although it is provided that the policy is to be granted within the limits of the province, the risks, by the express language of the clause, may be taken on vessels going far beyond those limits.

As the Union Act only gives power to the local legislatures to incorporate companies with provincial objects, it would seem that the Act is invalid in that respect.

The attention of the government of Quebec is invited to the expediency of repealing this Act.

A similar one can readily be obtained from the Parliament of Canada.

JOHN A. MACDONALD.

## QUEBEC—32ND VICTORIA, 1869.

### 2ND SESSION—1ST LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th November, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd November, 1869.

With reference to the Imperial "British North America Act, 1867," and also to the Order in Council of the 9th of June, 1868, on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report :—

That he considers the Acts mentioned in the annexed schedule, passed by the legislature of the province of Quebec, in the second session thereof (32nd Vic.), to be free from objection of any kind. He, therefore, recommends that the same be respectively left to their operation.

JOHN A. MACDONALD.

#### SCHEDULE.

32nd Victoria, chapters 1 to 3, 5 to 22, 24, 25 to 62, 64 to 96.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th November, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd November, 1869.

With reference to the following Act, passed by the legislature of the province of Quebec at its second session (32nd Victoria), the undersigned has the honour to report as follows :—

That chapter 4, intituled : "An Act to define the Privileges, Immunities and Powers of the Legislative Council and Legislative Assembly of Quebec, and to give summary protection to persons employed in the publication of Parliamentary Papers," is objectionable.

By the 18th clause of the "British North America Act, 1867," it is enacted that the privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Commons of the Dominion of Canada shall be such as shall be, from time to time, defined by Act of the Parliament of Canada, but so that the same shall never exceed those held, enjoyed and exercised at the passing of such Act, by the House of Commons of the United Kingdom.

It is to be assumed that the power to pass an Act defining those privileges was conferred upon the Parliament of Canada, on the ground that, without such a provision, the Parliament of Canada could not have passed any such Act.

It is clear, from the current of judicial decision in England, that neither of the branches of a colonial legislature has any inherent right to the privileges of the



Imperial Parliament. Perhaps, however, under the legislative powers given to the Parliament of the Dominion, by the 91st section of the Union Act, to make laws "for the peace, order and good government of Canada," it might have passed an Act, without any enabling power from the paramount authority, establishing and defining the privileges of its two chambers. However this may be with respect to the general Parliament, it is to be observed that there is no clause in the Union Act, similar to the 18th, giving to the provincial legislatures power to define or establish their privileges, and that no general powers of legislation for the good government of the provinces, are given to their legislatures. Their powers are strictly limited to those conferred by the 92nd, 93rd, 94th and 95th clauses of the Union Act.

By the Act in question it will be seen that the legislature of Quebec has declared that the members of the legislative council and legislative assembly of that province, shall enjoy the same privileges as those exercised by the Senate and House of Commons of Canada respectively.

It would seem, therefore, that this Act is in excess of the power of the provincial legislature. If it has any power to legislate in the matter at all, it seems to follow that, while the general Parliament can, under the 18th clause, confer no greater privileges, than those enjoyed by the Imperial House of Commons, the provincial legislature, being bound by no such limitation, might, if it were so disposed, confer upon itself and its members, privileges in excess of those belonging to the House of Commons of England.

The legislature of Ontario having, at its last session, passed a similar Act to the one in question, the undersigned, on the 20th February last, made a report thereon to your Excellency, which you were pleased to transmit to the Secretary of State for the Colonies, for the purpose of being referred to the law officers of the crown in England, and the Attorney and Solicitor General have given their opinion that it was not competent for the legislature of Ontario to pass such an Act.

The undersigned recommends that the attention of the Government of Quebec be called to this Act, suggesting that the same should be repealed at the next session of their legislature.

He also recommends that the copy of Lord Granville's despatch and of the opinion of the law officers of the crown, hereunto annexed, be transmitted with any Order in Council that may be adopted on this report, to the government of Quebec, and that their attention be particularly called to that portion of such opinion, which refers to the Act of the legislature of Ontario herein mentioned.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 26th November, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th November, 1869.

With reference to the report of undersigned of the 3rd instant, relative to the Act passed by the legislature of the province of Quebec, at its last session, being 32 Vic., chap. 4, intituled: "An Act to define the privileges, immunities and powers of the Legislative Council and Legislative Assembly of Quebec, and to give summary protection to persons employed in the publication of Parliamentary Papers;"

And also to the correspondence with the government of Quebec on the subject, the undersigned has now the honour to report, that in his opinion, it was not competent for the legislature of the province of Quebec to pass such Act, and he therefore recommends that the same should not receive the confirmation of your Excellency.

All of which is respectfully submitted.

JOHN A. MACDONALD.

[Proclamation disallowing the Act above mentioned, published in the "Canada Gazette" on the 4th day of December, 1869. Vol. III. No. 23, page 385.]

## QUEBEC, 33RD VICTORIA, 1869-70.

### 3RD SESSION—1ST LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 21st December, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th December, 1869.

With reference to the Imperial "British North America Act, 1867," and also to the Order in Council of the 9th of June, 1868, on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report:—

That he considers the Act passed during the present session of the legislature of the province of Quebec (33rd Victoria), entitled: "An Act to amend the law respecting the constitution of the Superior Court," to be free from objection of any kind. He therefore begs leave to recommend that the same be left to its operation.

All of which, &c.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th October, 1870.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th October, 1870.

With reference to the Imperial "British North America Act, 1867," and also to the Order in Council of the 9th of June, 1868, on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report:

That in his opinion all the Acts passed by the legislature of the province of Quebec in the third session thereof, 33rd Vic. (excepting chap. 5, and including chap. 10, the latter having been already reported upon) are free from objection of any kind.

He therefore recommends that the same be left to their operation.

With respect to chap. 5, entitled: "An Act to uphold the authority and dignity of the Houses of the Quebec legislature, and the independence of the Members thereof, and to protect persons publishing Parliamentary Papers," the undersigned has great doubts whether the legislature had jurisdiction, for reasons analogous to those contained in his report on the disallowance of the Act of the previous session, entitled: "An Act to define the privileges, immunities and powers of the legislative council and legislative assembly of Quebec, and to give summary protection to persons employed in the publication of Parliamentary Papers" to enact the said measure.

As, however, the Act in question contains provisions necessary to uphold the authority and dignity of the provincial legislature, the undersigned deems it inexpedient to interfere with the operation of the Act. He, therefore, recommends that it, also, should be left to its operation, it being, of course, open to any parties affected by it to dispute, before the legal tribunals, the constitutionality of the Act.

All which, &c.

JOHN A. MACDONALD.

QUEBEC, 34TH VICTORIA, 1870.

4TH SESSION—1ST LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd September, 1871.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th September, 1871.

With reference to the Imperial "British North America Act, 1867," and also to the Order in Council of the 9th June, 1868, on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report:—

That, after a careful consideration of the Acts passed in the fourth session of the legislature of the province of Quebec, held in the 34th year of Her Majesty's reign, he is of opinion that the same should be left to their operation, and he respectfully recommends accordingly.

The undersigned, however, at the same time, begs leave further to report, that he entertains considerable doubt whether the Act 34th Vic., chap. 2, intituled: "An Act to consolidate and amend the law respecting licenses, and the duties and obligations of persons bound to hold the same," is not, in some respects, *ultra vires*.

The Act imposes licenses and license fees on taverns, shops, pedlars, etc., in accordance with the power given by the 92nd section of the Union Act, which gives to the provincial legislatures the exclusive power of making laws in relation to shop, saloon, tavern, auctioneer and other licenses, in order to the raising of revenue for provincial, local or municipal purposes.

The Act in question goes further, however, in several of its provisions, than to provide for the raising of revenue by charging license fees. It contains a number of clauses providing for the regulation of taverns, stores and shops, which have no connection with any revenue purposes.

Now, by the Union Act, the duty of all legislation relating to regulation of trade and commerce, is thrown upon the general legislature, and, in the opinion of the undersigned, several of the provisions of the Quebec Act referred to, are in regulation of trade and do not concern the raising of revenue.

The undersigned, therefore, thinks it his duty to recommend that the attention of the provincial government be called to this matter, as worthy of their consideration. The Act is a beneficial one in itself, and is mainly a consolidation of the previously existing law.

It will be for any persons feeling themselves aggrieved by any action under the statute, to test the question of its validity in the courts.

The Act, chapter 38, intituled: "The Municipal Code of the Province of Quebec," is, in the opinion of the undersigned, liable to the same objection as the one mentioned, and the same remarks are applicable to it.

Chapter 36, intituled: "An Act to amend the Act 20th Victoria, chapter 125, intituled: 'An Act to divide the Quebec Turnpike Roads into two separate trusts, and to make other provisions relative thereto.'"

In the opinion of the undersigned, this is a private and local Act, affecting one of the assets belonging to the provinces of Quebec and Ontario jointly, and, as such, due notice should have been given of it in the Quebec *Gazette*, according to the rules of parliamentary practice, which obtain in that province.

The provision of the Act is, in itself, unobjectionable. It merely increases the number of trustees from five to seven persons.

All which is respectfully submitted.

JOHN A. MACDONALD.



QUEBEC, 35TH VICTORIA, 1871.

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1ST SESSION—2ND LEGISLATURE.

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*Memorandum of the Honourable the Minister of Justice.*

DEPARTMENT OF JUSTICE, OTTAWA, 9th July, 1873.

With respect to the Acts passed in the first session of the second legislature of the province of Quebec, held in the thirty-fifth year of Her Majesty's reign, no report was made by the Minister of Justice to his Excellency the Governor General.

After careful consideration of those Acts, it was seen that they were all unobjectionable, and it was thought unnecessary therefore to make any special report, but to allow them to go into operation under the provisions of "The British North America Act, 1867."

JOHN A. MACDONALD.

QUEBEC, 36TH VICTORIA, 1872.

2ND SESSION—2ND LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th July, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 9th July, 1873.

With reference to the Acts passed by the legislature of the province of Quebec, at the second session of the second legislature in the 36th year of Her Majesty's reign, 1872, the undersigned has the honour to report :—

That with the exception of chapters 13 and 16, which he reserves for further report; and with the further exception of chapters 52, 53, and 59, he considers all the Acts of that session unobjectionable, and recommends that they be left to their operation.

With regard to chapter 52, he is of opinion that the 54th section of that Act deals with the criminal law, inasmuch as it provides for the summary conviction before a mayor, or justice of the peace, of parties guilty of an assault on a constable, or police officer.

He, therefore, recommends that the attention of the government of Quebec be called to the expediency of repealing this clause at the next session of the legislature.

The same remarks will apply to the 46th section of chapter 53; and to the 33rd section of chapter 59.

The undersigned recommends, however, that these three last mentioned Acts should be left to their operation, leaving it to any parties affected by the clauses objected to in this report, to dispute their constitutionality before the legal tribunals.

All which is respectfully submitted.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General on the 7th May, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 7th May, 1874.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has had under consideration, two Acts of the legislature of the province of Quebec, passed in the 36th year of Her Majesty's reign, being respectively : "An Act respecting the appointment of Queen's Counsel," and "An Act respecting the Registers of Civil Status," and he sees no objection thereto, and recommends, therefore, that the same should be left to their operation.

A. A. DORION,  
*Minister of Justice.*

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QUEBEC, 37TH VICTORIA, 1873-74.

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3RD SESSION—2ND LEGISLATURE.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 14th June, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd June, 1875.

With reference to the (59) Acts passed by the legislature of the province of Quebec, at the third session of the second legislature, in the 37th year of Her Majesty's reign, 1873-74, the undersigned has the honour to report :—

That with the exception of chapters 8 and 55, he considers all the Acts of that session unobjectionable, and recommends that they be left to their operation.

With reference to chapter 8 "An Act to amend the Acts respecting District Magistrates and Magistrates' Courts in this Province," the undersigned has grave doubts as to the constitutionality of this Act, which is already questioned before some courts of justice, but he is of opinion that, inasmuch as chapter 23, of 32 Victoria, "An Act respecting District Magistrates in this Province," was allowed to go into operation, this Act should also be left to its operation.

With reference to chapter 55, the undersigned is of opinion : That the powers given to the Ottawa Iron and Steel Manufacturing Company by the fourth section, to construct, maintain and use all necessary wharfs, piers and booms required for the purpose of the said company, are such as might interfere with navigation, and that section would seem therefore *ultra vires* ; and the undersigned, not deeming it necessary to interfere with the operation of the Act, recommends that it should be left to its operation, and that the attention of the Provincial Government of Quebec be invited to the expediency of repealing this section.

All which is respectfully submitted.

T. FOURNIER,  
*Acting Minister of Justice.*



QUEBEC, 38TH VICTORIA, 1874-75.

4TH SESSION—2ND LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th October, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th October, 1876.

TO HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL :

With reference to the Acts of the province of Quebec, passed in the fourth session of the second legislature, 38th Victoria, 1875, the undersigned begs to report as follows :—

The undersigned does not recommend that the power of disallowance be exercised with reference to the following Acts :

Chapters 1 to 3, 5, 6, 8, to 16, 18 to 27, 30 to 46, 48 to 75, 77, 80, 82 to 88, 90 to 97, 99 to 101.

With reference to

Chapter 4—"An Act to encourage the manufacture of sugar from beet-root in the Province of Quebec."

This Act provides that the Lieutenant-Governor may grant an annual subsidy of five thousand dollars during five years, for the establishment of the first manufactory of sugar from beet-root in the province. Such an establishment has been recognized by the Parliament of Canada as of public advantage, by the statutory provisions which except the manufacture from any duty of excise for a term of years. The undersigned does not presume that any practical inconvenience will be occasioned by this Act. He, however, thinks it proper to call the attention of council to its provisions, inasmuch as it is quite conceivable that legislation of this description might impair or nullify the fiscal policy of Canada, and diminish or destroy the sources of revenue, upon which the government of Canada is obliged to depend for the discharge of the public obligations, and of the expenses of government, and a case might arise in which it would be necessary to consider whether such legislation should be allowed.

The undersigned recommends that this Act be left to its operation.

Chapter 7—"An Act respecting the election of Members of the Legislative Assembly of the Province of Quebec."

The first part is entitled "Parliamentary Electors."

The same title appears in section 3 of this part.

Sections 56 and 57.—These sections impose penalties upon secretary-treasurers who may alter or falsify the statutory list of electors, and upon custodians of such lists, who may falsify copies furnished by them under the statute.

These sections appear to trench upon the criminal law.

Section 64 speaks of the list of "Parliamentary Electors."

The second part is entitled "Holding of Parliamentary Elections."

With reference to the use of this phrase, the undersigned attaches an extract from his report on the statutes of Manitoba, made on the 19th inst., and submits that the attention of the Lieutenant Governor of Quebec should be called to these observations.

Section 218.—This section provides that whoever forges, &c., ballot papers, or attempts so to do, shall incur certain penalties of fine and imprisonment. This section, at any rate in part, obviously trenches upon the provisions of the criminal law, and the undersigned recommends that the attention of the Lieutenant-Governor should be called to the objection, with a view to the amendment of the clause, which is, in these particulars, clearly *ultra vires*.

Sections 235, 238, 258 and 290.—These, and also some other sections, seem to trench upon the criminal law, and, with reference to them, the undersigned refers also to section 291, which provides that "every punishment, by way of fine or imprisonment, imposed by the present Act, shall be incurred in addition to any punishment that may be inflicted by the Parliament of Canada, for the same offence."

With reference to this latter and the other sections, the undersigned begs to quote the following remarks from his report on the legislation of the province of Manitoba, and recommends that the attention of the Lieutenant-Governor should be called to them, as applicable to the sections in question:—

"This section, in terms, acknowledges that some, at any rate, of the acts which are to be punished under the law, are crimes within the criminal law, and that the legislation is, therefore, *ultra vires*.

"The undersigned observes that prior legislation of the other provinces has, although objectionable in some of the particulars to which he has called attention, been suffered to pass without observation, and, upon the whole, he does not recommend the disallowance of this Act.

"There is, however, a growing tendency towards the invasion of the criminal law by local legislatures, which is obviously objectionable, and he suggests that the attention of the Lieutenant-Governor should be called to the Act now under consideration, with the request that he would move the government to recommend to the legislature a measure, repealing such sections as trench upon the criminal law."

Chapter 47. "An Act to incorporate the St. Lawrence Bridge Company."

This Act recites that a bridge over the River St. Lawrence, passing at or near St. Helen's Island, and near the city of Montreal, has become an absolute necessity, both to establish a connection between the railways on the north of the River St. Lawrence and the railway system on the south of the river, and for other purposes. It incorporates the Quebec Railway Act of 1869, with certain exceptions, applying certain of its provisions to the company incorporated, and to the bridge authorized to be constructed by the Act.

It authorizes the company to build, construct, maintain, work and manage a bridge across the River St. Lawrence, from a point on the north shore, passing on or near the island called Isle Ronde, to the St. Helen's Island, or near it, near the city of Montreal, to or near the parish of Longueuil, or St. Lambert, in the county of Chambly. It gives powers to any railway companies, whose roads have a terminus or station at or near Montreal, or connecting with any railway having such a terminus, to loan their credit to the corporation, and to subscribe to its stock. It provides that no work shall be commenced, until the plans and the site of the bridge have been approved by the Lieutenant-Governor in Council, and the conditions he may impose shall have been complied with, and that notice of the particulars shall be published in two of the Montreal newspapers, for a period of three months before steps are taken by the company to erect the piers of the bridge.

A bill was introduced during the last session of the Canadian Parliament, for the purpose of authorizing the construction of a bridge across the St. Lawrence River, at or near Montreal, which gave rise to a lengthened investigation into the question, and in the end the Bill was not proceeded with. In view of what then occurred, and of the great importance of preserving the navigation of the River St. Lawrence, the undersigned recommends that the same course be taken with this measure, as has been ordered with reference to the Act of the legislature of Manitoba for the construction of a bridge across the Assiniboine, and that the Act be disallowed, leaving to those interested to apply to the Parliament of Canada for authority to prosecute the enterprise.



Chapter 76. "An Act to amend and consolidate the Act of incorporation of the City of Three Rivers, and the various Acts which amend the same."

The 75th section gives powers to the council to make by-laws for restraining and prohibiting the sale of spirituous liquors, and is thus open to some of the questions now before the courts, as to the power of the local legislature to make such enactments.

The 79th section, subsection 4, seems to trench upon the provisions of the criminal law, and the attention of the Lieutenant-Governor should be called to it, with a view to its repeal.

Chapter 78. "An Act to amend the Act 36 Vic., cap. 53, intituled: 'An Act to incorporate the Corporation of the Town of Lachine.'"

Section 27. Some of the provisions of this section may be open to question as being *ultra vires*, but similar legislation having taken place in another province, the undersigned does not recommend any interference. The attention of the Lieutenant-Governor should, however, be called to the section, with a view to its amendment.

Chapter 79. "An Act to incorporate the City of Hull."

Section 91. This section empowers the council of the city of Hull to make such by-laws as they may deem expedient in relation to the ferries between the cities of Hull and Ottawa, and the township of Templeton, and to impose penalties upon all persons or ferrymen, refusing or neglecting to conform to such by-laws, and to regulate the manner, and before whom, the same shall be recovered, and such penalties shall belong to the city of Hull.

It further provides that the mayor, aldermen and citizens only shall have the right to grant licenses to "keep such ferry, which licenses shall not exceed a period of ten years, and the revenue from which licenses shall be equally divided between both corporations."

This provision is clearly *ultra vires*, as the ferry between Hull and Ottawa is between two provinces, and is thus within the exclusive power of Canada. The attention of the Lieutenant-Governor should be called to this section, with a view to its repeal.

The same section (subsection 5) gives power to the council to make by-laws for restraining and prohibiting the sale of spirituous liquor, and is thus open to some of the questions now before the courts, as to the power of the local legislature to make such enactments.

Section 130. This section trenches upon the provisions of the criminal law, and is similar to section 54 of 36 Vic., cap. 52, statutes of Quebec, to which objection was taken by the Minister of Justice in a report dated 9th June, 1873.

The undersigned suggests that the Lieutenant-Governor should be invited to promote the repeal of this section.

Sections 166, 219, 220 and 221 appear to trench upon the criminal law, and the attention of the Lieutenant-Governor should be called to them, with a view to their amendment or repeal.

Chapter 81. "An Act to incorporate 'The Atlantic Insurance Company of Montreal.'"

This Act recites that the increasing trade and commerce of the province of Quebec justifies and demands increased facilities for marine and inland insurance, that the establishment of companies for that purpose will afford greater convenience in effecting insurance for settling losses, and also more security for losses, and greater facilities for recovering them, and that the persons named are desirous of establishing such a company.

By the first section certain persons are united for the purpose of insurance.

By the second section the company is given powers within the limits of the province of Quebec, to make insurances connected with marine risks of navigation and transportation by water, against loss or damage by fire or by perils of navigation of or to any vessels, &c., either seagoing, or navigating upon lakes, rivers or navigable waters, and of or to any cargo, &c., and to all other necessary things relating to such objects. Although the language in the preamble is directed, in part, at any rate, to provincial purposes, yet the powers given to the company are apparently unlimited, save that these



contracts are to be made in Quebec; and the undersigned quotes in the second appendix hereunto an extract from his report of 15th September instant, on several Insurance Acts containing similar provisions passed by the legislature of Nova Scotia, and he recommends that the attention of the Lieutenant Governor of Quebec should be called to the suggested difficulties, with an intimation that, subject to such observations as he may make, it would seem that this Act should not be left to its operation, unless it is to be amended at the ensuing session of the legislature.

Chapter 89. "An Act to incorporate 'The Sherbrooke Gas Company.'"

Sections 15, 18 and 19.—Most of the subjects of these sections appear to come within the criminal law, being provided for in the Act with reference to malicious injuries to property, and that the attention of the Lieutenant-Governor should be called to these clauses in this respect.

Chapter 98. "An Act to authorize Geo. Benson Hall to make improvements in River Chaudière, and exact tolls for the use thereof."

This Act recites that it is of importance for the advantage of lumbering on the River Chaudière and its tributaries that a dam and piers, and safe and secure booms should be erected on the said river at and above the tidal and navigable waters of the River St. Lawrence, at a point to be determined by the Commissioners of Public Works; that George Benson Hall has prayed for a privilege to that effect, and empowers Mr. Hall to erect a dam, &c., and to charge tolls. The undersigned subjoins (Appendix 3) a copy of the report of 15th September instant, upon certain Acts of the legislature of Nova Scotia with like objects. The undersigned has called the attention of the Minister of Marine and Fisheries to the Act, with a view to obtaining such information as is available concerning the navigability of River Chaudière, and has received the following reply: "This river, I understand, has a rapid or fall near its mouth, above which vessels do not go, nor is there any navigation above that point for vessels; consequently I do not see that the exercise of the power given by this Act will in any way operate injuriously to the interests of navigation."

Upon the whole the undersigned does not recommend that the power of disallowance be exercised, but he recommends that the attention of the Lieutenant-Governor of Quebec be called to the difficulty that may arise under such legislation.

EDWARD BLAKE,

*Minister of Justice.*

[*Proclamation disallowing the Act, chapter 47, above mentioned, published in the Canada Gazette on the 28th day of October, 1876. Vol. X, No. 18, page 563.*]

## APPENDIX 1.

*Extract from Report of the Minister of Justice, of 19th September, 1876, Statutes of Manitoba, 38 Victoria, 1875.*

Chapter 2, "An Act respecting the election of Members of the Legislative Assembly of the Province of Manitoba."

The heading of the first part is "Parliamentary Elections." The same phrase occurs before the 12th section, and in the latter part of the 13th section, which provides that the list thereby established, shall be the list of parliamentary electors for the electoral division. With reference to this phrase, the undersigned refers to the report of the Minister of Justice of 1st July, 1868, upon chapter 30, of 31st Victoria, of the statutes of Ontario, in which report there is contained, with reference to the same phrase, the following observations:—

"The 41st section of the Union Act provides that all the laws of the several provinces relating to parliamentary elections in force at the time of the union, shall remain in force until the Parliament of Canada otherwise provides."

"If the clause in question is intended merely to apply to elections for the legislative assembly of Ontario, it is inaccurate in expression."

"To avoid confusion, the Union Act confines the name of Parliament to the general legislature, the provincial legislative bodies are styled uniformly as legislatures."

"The undersigned recommends that the attention of the Government of Ontario be called to this section, and suggests that the same should be amended, so as to limit it expressly to elections for the legislature of Ontario."

The undersigned recommends that the attention of the Lieutenant-Governor of Manitoba should be called to the use of this phrase, with a suggestion that it should be amended, so as to limit it expressly to electors for the legislative assembly of Manitoba.

## APPENDIX 2.

*Extract from Report of Minister of Justice of 15th September, on the Acts of the Legislature of Nova Scotia, 38 Victoria, 1875.*

With reference to the Acts, the undersigned would refer to his approved report of 27th October, 1875, upon the Prince Edward Island Act, to incorporate the Merchant Marine Insurance Company of Prince Edward Island, which contains the following language :—

"It appears to the undersigned that, under the express language of this clause, it is attempted to give the company power to do an insurance business with persons not residents of the province, in respect of risks on vessels not touching provincial ports; in a word, to do a universal insurance business. The power of provincial legislatures to incorporate insurance companies is to be found, if at all, in the 11th subsection of the 92nd section of the "British North America Act, 1867," which gives to the local legislature authority to make laws for the incorporation of companies for provincial objects. It appears to the undersigned that the powers attempted to be conferred on this company, are beyond any fair construction of these words."

The undersigned would also refer to the approved report of 16th November, 1875, which refers to the Ontario Act to incorporate the Canada Fire and Marine Insurance Company, which contains the following language :—

"The powers proposed to be conferred by this Act appear, to the undersigned, too wide. It authorizes the company to effect policies of fire insurance with any persons or bodies corporate, and to make contracts of marine insurance with any persons in respect to losses to vessels navigating any waters, from or to any ports. It is not provided that the chief place of business shall be in the province. Power is given to comply with the laws of other provinces or states, wherein the company may carry on business, and the 'Canada' introduced into the name, is, of itself, indicative of more than provincial power. On the 31st March, 1875, chapter 82, of the statutes of Nova Scotia, for 1874, was disallowed, upon the grounds applicable to this Act."

The language quoted appears to apply to all the Acts now under consideration. Chapter 76 indeed does not expressly authorize the doing of a universal insurance business, though its language is wide enough for such an interpretation, but the corporations treated or perpetuated by the remaining Acts, are expressly authorized to do universal marine insurance business.

The undersigned recommends that the attention of the Lieutenant Governor of Nova Scotia should be called to the suggested difficulties, with an intimation that, subject to such observations as he may make, it would seem that these Acts cannot be left to their operation.

## APPENDIX 3.

*Extract from Report of Minister of Justice of 15th September, 1876, on the Statutes of Nova Scotia, 38th Victoria, 1875.*

Chapter 89. "An Act to incorporate the Colchester Driving and Manufacturing Company." This Act authorizes the company to build dams, sluices and breakwaters, and otherwise improve Little River, in Brookfield, in the county of Colchester and its



tributaries, so as to make the same navigable for logs, timber and lumber, and to levy tolls for conveying logs, timber and lumber down such river and its tributaries; and it provides for a lien on all logs, &c., passing through the dams, &c., and for the enforcement of such lien. The 6th section provides that nothing in the Act contained shall be construed to authorize the company to interrupt, hinder or prevent the navigation of any navigable river or other navigable water.

Chapter 90. "An Act to incorporate the St. Margaret's Bay Lumber and Timber Driving Company." This Act gives substantially the same powers with reference to the Ingraham and Indian Rivers, and their tributaries.

Chapter 91. "An Act to incorporate the Cumberland Driving Company." This Act gives substantially the same powers with reference to the Moose River, Apple River, Half-Way River and River Hebert, save that the power to levy tolls is confined to levying tolls for conveying logs, &c., down such of the rivers as the company shall have so improved, as to make navigable for logs, timber and lumber.

Chapter 92. "An Act to incorporate the Liscomb River Driving Company." This Act gives substantially like powers as are given by chapters 89 and 90, with reference to the east and west branches of the Liscomb River and their tributaries, but it does not contain the restrictive clause, providing the company be not authorized or empowered to interrupt the navigation of any navigable waters.

The undersigned is not aware whether any of the rivers referred to in these Acts are to any extent at present navigable. If so, none of them can be said to be wholly unobjectionable, as they appear to authorize the companies to levy tolls, not merely for the conveyance of the logs through the improvements, but also for their passage down those parts of the rivers which are navigable. It is further to be observed, that it might become an important question, whether works of this kind should be constructed under local authority in important navigable rivers, the navigation of which might, by a small expenditure, be improved.

Chapter 92 is open to the additional objection that the restrictive clause is not inserted. It is presumed that none of these rivers are of great importance, and that no serious embarrassment will result from the operation of the companies. Of course they do not in law, by these local Acts, acquire any power to interfere with the free navigation of such parts of the river as are navigable, and upon the whole the undersigned submits that, notwithstanding the difficulties to which he has referred, they may be left to their operation, the attention of the Lieutenant Governor being called to the difficulty.

#### PAPERS *RE* RYLAND.

*Mr. Ryland to Mr. Secretary De Boucherville.*

MONTREAL, 8th February, 1875.

SIR,—Although I have already written to Mr. Attorney-General Church on the subject of the bill introduced by him for the subdivision of the registry office for the registration division of Montreal, as the measure, if it passed, materially and injuriously affects the arrangement between the Imperial Government and myself, under which I hold office, I deem it right officially, to bring the matter under the notice of his Excellency the Lieutenant Governor in Council, in order to guard against a possible plea of want of knowledge on the part of the Quebec Government in regard to my vested right.

And that there may be no mistake in any quarter on the subject, I have, by this day's mail, brought the whole matter under the notice of his Excellency the Governor General, representing the Imperial Government.

I have, &c.,

G. H. RYLAND.



*Mr. Ryland to His Excellency the Governor General.*

MONTREAL, 8th February, 1875.

MY LORD,—Mr. Attorney-General Church having introduced a bill in the legislative assembly of Quebec to subdivide the registry office for registration division of Montreal into three divisions, I take the liberty of inclosing a copy of a communication I have made to him on the subject.

In the year 1856 the then Attorney-General, now Mr. Justice Drummond, brought in a bill for the division of counties for registration purposes. It included a clause dividing Montreal into two offices.

This, his Excellency Sir Edmund Head, insisted on being struck out, on the ground that it would interfere with the arrangement between the Imperial Government and myself, under which I held office, and might lead to unpleasant correspondence between the two governments.

The present bill is of a much more objectionable nature, and has been introduced, as I am credibly informed, for the sole purpose of rewarding certain members for their votes and support of the Tanneries scandal investigation.

The late season of the session at which it has been introduced may perhaps prevent the determined opposition by the landed proprietors, and the legal profession in Montreal, which would otherwise have been offered to its passage through the House.

But, as the measure will materially interfere with the guarantee under which I hold office, I respectfully submit that it is precisely one of those cases in which you would be justified in taking steps to protect vested rights, involving the honour of the crown you represent.

I have, &amp;c.,

G. H. RYLAND.

*Memorial of Mr. Ryland to the Governor General.*

To His Excellency the Right Honourable the Earl of Dufferin, Governor General, etc., etc., etc., and the Honourable the Privy Council of the Dominion of Canada:

The petition of George H. Ryland, Esquire, respectfully sheweth:—

That your petitioner, in 1841, held the imperial and patent appointment of registrar and clerk of the executive council of Canada;

That on public grounds, and at the request of Her Majesty's Lord High Commissioner\* your petitioner, though not compellable to do so, consented to surrender this office, and to receive in lieu thereof the registrarship of Quebec, subsequently transferred to Montreal, with the guarantee of the representative of the crown;

That this arrangement was afterwards adopted and confirmed by the legislature of Canada in a joint address by both branches thereof to Her Majesty, dated 17th April, 1846;

That it was further adopted and confirmed by the House of Lords, on resolutions proposed and carried by His Grace the Duke of Argyle, on the 10th May, 1850;

That the bill lately passed by the legislature of Quebec, to divide the registration division of Montreal into three, virtually does away with the office conferred on your petitioner, as aforesaid, and will have the effect of depriving him of the income and advantages guaranteed by the arrangement between the representatives of Her Majesty and himself;

\*See Lord John Russell's despatch, No. 52, dated 20th July, 1855.

Wherefore, your petitioner prays that your Excellency in Privy Council will take such steps, as in your wisdom may be thought proper, to protect him in his vested rights and to arrest a measure at once injurious to the public, and involving the faith and honour of the crown.

And your petitioner, etc.

MONTREAL, 27th February, 1875.

G. H. RYLAND.

*Petition from Members of the Legal Profession, &c., of Montreal to the Governor General.*

MONTREAL, 11th May, 1875.

SIR,—We have the honour, by this day's post, to forward a petition to his Excellency the Governor General in Council, praying for the disallowance of the bill lately passed by the local legislature of Quebec, for the subdivision of the present registration division of Montreal into three divisions. The petition, as you will perceive, is signed by all the landed proprietors, capitalists, and most influential men of all classes in this community, and, as it merits more than ordinary attention, we respectfully urge that it be brought, as soon as possible, before the Privy Council, with a view to the immediate disallowing of the Act as prayed for.

B. DEVLIN, M.P.

L. A. JETTE, M.P.

F. MACKENZIE, M.P.

*To His Excellency the Right Honourable the Earl of Dufferin, &c., &c., &c, Governor General and the Privy Council of the Dominion of Canada :*

The memorial of the undersigned members of the legal profession, notaries, landed proprietors and citizens of Montreal, respectfully represents :—

That the law recently passed by the local parliament of Quebec, for the subdivision of the present registration division of Montreal into three, was run through both branches of the legislature in a hasty manner, without reference to the wishes or interests of the inhabitants of this important portion of the Dominion

That, if carried into execution, it will cause inconceivable difficulty and confusion, in procuring the necessary information in the transfer of property and investment of capital, and, in many cases, will quadruple the present cost and expenses of registration.

That your petitioners are aware that certain reforms are necessary in the present registry office, but these reforms apply to the system, for which no remedy is provided by the new Registration Act, which only multiplies the evils of which men complain.

That the delay now complained of in obtaining searches, will be seriously increased and, in fact, prove an insuperable obstacle to parties requiring prompt and accurate information relative to real estate.

Wherefore, your memorialists respectfully pray, that your Excellency will use the authority vested in you to avert the threatened evils complained of, either by disallowance of the Act in question, or in such other manner, as, in your wisdom, your Excellency may deem right to adopt.

And your memorialists, etc.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th September, 1876.

TO HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL :

The undersigned has the honour to report :—

1. That an Act was passed by the legislature of the province of Quebec in the 38th year of Her Majesty's reign, chap. 17, assented to on the 23rd of February, 1875, for



the purpose of dividing the registration division of Montreal into three registration divisions, a certified copy of which, as being one of the Acts of that session, was received by the Governor General on the 22nd day of November last.

The Act provides that after the period fixed by the Lieutenant Governor by proclamation, the registration division of Montreal shall be divided into three divisions for the register of deeds, etc., specifying the same.

Also, that the registry office now established in the city of Montreal shall continue to be that of the registration division of Montreal West, and the present registrar shall, without new appointment, but during good pleasure, continue the registrar of such registration division.

The registrar of each registration division is also required to give security to the amount of \$10,000.

2. On the 15th of March, 1875, Mr. Ryland transmitted a petition to the Governor General, a copy of which was immediately transmitted to the Lieutenant-Governor, and the receipt of the same was duly acknowledged.

That petition recites, that Mr. Ryland, in 1841, held the imperial patent appointment of registrar and clerk of the executive council of Canada.

That on public grounds, and at the request of Her Majesty's Lord High Commissioner, Mr. Ryland, though not compellable to do so, consented to surrender that office and receive, in lieu thereof, the registrarship of Quebec, subsequently transferred to Montreal, with the guarantee of the representative of the crown.

That this arrangement was afterwards adopted and confirmed by the legislature of Canada, in a joint address by both branches thereof to Her Majesty, dated 17th April, 1846. That it was further adopted and confirmed by the House of Lords on resolutions proposed and carried by His Grace the Duke of Argyle, on the 10th of May, 1850.

That the bill lately passed by the legislature of Quebec to divide the registration division of Montreal into three, virtually does away with the office conferred on Mr. Ryland, and will have the effect of depriving him of the income and advantages guaranteed by the arrangement between the representative of the Queen and himself. He prays, therefore, that steps may be taken to protect him in his vested rights, and to arrest a measure at once injurious to the public, and involving the faith and honour of the Crown.

3. In May last a petition was presented by three members for the electoral divisions of Montreal, "signed by all the large landed proprietors, capitalists, and most influential men of all classes in that community."

The petition states "that the law recently passed (to which allusion was above made) was run through both branches of the legislature in a hasty manner, without reference to the wishes or interests of the inhabitants of this important portion of the Dominion; that, if carried into execution, it will cause inconceivable difficulty and confusion in procuring the necessary information in the transfer of property and investment of capital, and, in many cases, will quadruple the present cost and expense of registration. That your petitioners are aware that certain reforms are necessary in the present registry office, but these reforms apply to the system, for which no remedy is provided by the new Registration Act, which only multiplies the evils of which men complain. That the delay now complained of in obtaining searches will be seriously increased, and, in fact, prove an insuperable obstacle to parties requiring prompt and accurate information relative to real estate. Therefore, your memorialists respectfully pray, that your Excellency will use the authority vested in you to avert the threatened evils complained of, either by disallowance of the Act in question, or in such manner as, in your wisdom, your Excellency may deem right to adopt."

4. The Acts of the legislature of Quebec, comprising the one under consideration, were not received by the Secretary of State until the 22nd day of November, 1875, and the period within which the power of disallowance can be exercised, consequently, expires on the 22nd day of November, 1876.

5. The undersigned has received a letter from Mr. Ryland, dated 23rd September, 1876, recapitulating several points which he considers of moment in the consideration of the Act, and pointing out in detail the injurious manner in which the Act, if allowed to



go into operation, would affect his official income and position. That portion of Mr. Ryland's letter is in the following words :—

"I shall now proceed, as concisely as possible, to point out the injurious manner in which the Act in question, if allowed to go into operation, will affect my official income and position.

"Under my commission as registrar of the registration division of Montreal, my jurisdiction extends not only over the city of Montreal, but all the neighbouring parishes, including the counties of Hochelaga, Jacques Cartier, Isle Bizard, and, in fact, the whole island of Montreal, the whole extending over a length of upwards of forty miles ; whereas, by the present Act, I should be restricted to an area of about five miles, flanked on both sides by the growing portions of the city.

"The Act of the local legislature over-riding the whole of the arrangement between the crown and myself, and without the slightest provision to compensate me, divides the present registration division into three.

"The first is to comprise the East Ward, the St. Mary's, the St. Jacques, the Saint Louis and the Saint Lawrence Wards, in all of which transactions, requiring registration, are daily passed.

"In fact, I may add that about one-half of the receipts of my office are derived from those quarters, including the growing village of St. Jean Baptiste, which is also taken away from me.

"The second division is to comprise the Centre, Western, St. Antoine and Ste. Anne's Ward, within the city limits.

"The accompanying map will show you what this is. It contains the old part of the town, comprising the public buildings, court-house, large stores, churches, banks, squares, colleges, seminary, and being with the exception of a narrow, unbuilt strip, mostly property which never changes hand, and, indeed, where there is seldom a transaction passed requiring registration, and I think I am perfectly safe in saying that the receipts therefrom would not pay the current expenses of the office.

"This portion, however, of my present office I am generously allowed to retain.

\* \* \* \* \*

"The third division, comprising the counties of Hochelaga and Jacques Cartier, including all the parishes from the east end of Dorchester street to Bout de L'Isle, is about the most important, and, as regards registration, the most improving portion of my division, destined hereafter to provide a remunerating income to the registrar, because the whole French-working portion of the population, as well as the shipping interests and traffic, are moving that way."

6. With reference to the petition of Mr. Ryland, the undersigned has examined into the facts relative to his appointment, and they appear to him to be correctly detailed in the address to Her Majesty of the legislative assembly of the late province of Canada, passed in the year 1846, founded upon the report of a select committee made after a careful consideration of the documents and correspondence, which address is in the following words :—

"We, your Majesty's most dutiful and loyal subjects, the legislative assembly of Canada, in provincial parliament assembled, humbly beg leave to approach your Majesty with our renewed expression of devoted attachment to your Majesty's royal person and government.

"We humbly beg leave to lay before your Majesty the particulars of a case which has resulted in serious injury to the circumstances of a faithful subject of your Majesty, and we beg permission to submit for your Majesty's gracious consideration :

"Previous to the union of the provinces of Upper and Lower Canada in 1841, the office of clerk of the executive council of the latter province was held by George H. Ryland, Esquire, he having been appointed thereto in October, 1838, and having succeeded his late respected father, who had held the same office for a long period of years, and Mr. Ryland continued in the performance of the duties of the same office under the government of the united province, having been sworn in as such in February, 1841.

"The late Lord Sydenham, the then Governor General of the province, in reorganizing the executive council, thought it proper to make several changes in the constitu-

tion of the executive council, and to transfer many of the duties, which up to that period, had been performed by the clerk, to the president of the council, and in effecting this arrangement his Lordship proposed to Mr. Ryland to surrender the appointment, and to accept in its stead the office of registrar of deeds in the then judicial district of Quebec, at the same time guaranteeing to him an annual income, from the emoluments thereof, equal to the sum of £515 currency, to which he would be entitled as a retiring allowance under the imperial statute, 4 and 5 Wm. IV., chap. 24.

"Mr. Ryland, on being thus guaranteed, and having reason to expect that the emoluments of the office offered to him would amount in the first year to a large sum, affording him ample compensation for vacating his original one, acceded to their proposal, and placed the latter at his Excellency's disposal.

"But he expressly stipulated in his acceptance of his new appointment, as well as in answer to the circular of his Excellency, Sir R. Jackson, Administrator of the Government, dated 18th December, 1841, that in the event of the registrarship of the said district of Quebec not proving equal in value to his appointment as clerk of the executive council, the sum guaranteed was not to be considered as compensation in full, either for relinquishing that office, or for his claim upon the government.

"The Registry Ordinance of Lower Canada did not come into operation until the 31st December, 1841, and the time within which all existing deeds were to have been registered, and from which the great amount of remuneration would have resulted, was extended, until, eventually, a material alteration was made in the registration law, establishing county instead of district registry offices, and causing Mr. Ryland to become registrar of the county, instead of the district of Quebec, notwithstanding his remonstrance; and this alteration had the effect not only of depriving Mr. Ryland of a great proportion of the remuneration resulting from these arrears, but also of essentially reducing the annual income of the office.

"It is true, that at a subsequent period, namely, on the 8th July, 1845, Mr. Ryland was transferred to the more important office of registrar of the county of Montreal, which he now holds, but the reports of the commissioners appointed to examine into the registry offices, establish that both offices have been sources of labour and expense, rather than of profit.

"From the circumstances hereinbefore detailed, the legislative assembly feel that the case of Mr. Ryland is one of great hardship; that his claims, the justice of which have been officially recognized by the late Governor General, Lord Metcalfe, ought not to be avoided nor overlooked, and that he has a right to expect that the contract between the Governor General and him, of which he has performed his part, should be carried out by the imperial government according to its terms, or as that may now be impossible, that he should be fully compensated for the non-fulfilment thereof.

"We, therefore, in reviewing these circumstances, humbly beg permission to call Mr. Ryland's claims, as herein set forth, to your Majesty's gracious notice, and we humbly pray that your Majesty will be pleased to take them into your most favourable consideration, and direct such measures to be adopted therein, as your Majesty, in your wisdom, may find them to deserve."

7. Mr. Ryland, at the date of this address, held his present office of registrar of Montreal and he claimed amongst other things the performance of Lord Sydenham's guarantee of 23rd August, 1841, referred to in the address, and which was in the following words :

\* \* \* \* "But as it is possible that the emoluments of the registrarship of Quebec may fall very far below those of your present office, his Excellency is willing to guarantee to you an income equal to the sum to which you would be entitled as a retiring allowance, were your employment in the public service altogether discontinued.

"Assuming your income on an average of the last three years to be £1,030, currency, and your length of service as a public officer to be 24 years, you would be entitled under the scale established by the 4 and 5 William IV., chap. 24, to a retirement equal to one-half of your emolument, or £515 currency.



"That amount, therefore, his Excellency is willing to guarantee to you by making up your emoluments from the employment in the public service which may hereafter be assigned to you, to that extent, should they be insufficient of themselves to do so—should they exceed it, you will of course be entitled to the excess."

8. It seems admitted on all hands that Mr. Ryland's transfer to the registrarship did not affect his position, and that for all material purposes he stood and stands on the same ground, with reference to the registrarship of Montreal, which he occupied with reference to that of Quebec.

9. For some time, while both the imperial and colonial governments admitted that Mr. Ryland's claim had a just foundation, each government submitted that the responsibility of settling these claims rested with the other.

10. In the course of these discussions, on the 10th of May, 1850, the House of Lords passed resolutions upon the subject, expressive of the opinion that Mr. Ryland's claims ought not to be avoided or overlooked, and that he had a right to expect that the agreement entered into between him and the Governor General, of which he had performed his part, should be carried into effect according to its terms; or, as that might then be impossible, that he should be compensated for the non-fulfilment thereof.

11. On the 20th July, 1855, Lord John Russell, then Colonial Secretary, addressed the then governor, a despatch in the following words:—

"The attention of Her Majesty's Government has again been called to the case of Mr. G. H. Ryland, formerly clerk and registrar of the executive council of the united province of Canada.

"This case has been repeatedly brought under the consideration both of the Imperial and of the colonial governments, but no decision has been arrived at which can be considered satisfactory, because, whilst both governments have admitted that the claims of Mr. Ryland have in themselves a just foundation, each of those governments have contended that the obligation of satisfying those claims, rests with the other.

"In 1846 the case was very carefully investigated by a committee of the colonial legislature appointed for that purpose.

"The report of the committee was:—

"That Mr. Ryland's claims, the justice of which has been recognized by the late Governor General, Lord Metcalfe, ought not to be avoided or overlooked, and that he has a right to expect that the contract entered into between him and the government, of which he has performed his part, should be carried out according to its terms, or, as that may now be impossible, that he should be fully compensated for the non-fulfilment thereof.

"In the same year Lord Grey, then Secretary of State for the Colonies, replied to an address founded on this report, that neither he nor his predecessor disputed Mr. Ryland's claim to compensation for whatever loss he may have sustained by the surrender of his office as clerk of the executive council; and Lord Grey directed Lord Cathcart, then Governor General, 'strongly to urge on the House of Assembly the necessity of their providing for the reasonable compensation of the claimant.'

"It appears, therefore, from these, as well as from other facts connected with the case, that Mr. Ryland has failed hitherto in securing the satisfaction of his claims, not from any dispute as to their justice, but from difficulties in adjusting the manner in which compensation should be found.

"Considering the peculiar circumstances under which Lord Sydenham was sent as Governor General to Canada, and the large powers with which, for special purposes, he was invested, Her Majesty's Government are prepared to admit that the promise which he made, he had sufficient authority to make. They admit, further, that that authority came from the imperial government, and belonged to his position as representative of the crown. On the other hand, it will not be disputed that the arrangement which he proposed to Mr. Ryland, and which that gentleman was induced to accept, was one exclusively connected with colonial affairs, and that whatever advantages attended, or were expected to attend it, were derivable by the colony alone.

"The peculiarity of Mr. Ryland's case does not depend only on the specific written promise given by Lord Sydenham.



"It is further distinguished by the circumstance that that promise was given in order to induce Mr. Ryland to take a step which, on the faith of that promise, he did take, and which otherwise he would not have taken. He was induced to resign an office, of which he was in actual possession at the time.

"Thus the loss to which he has been since exposed, has arisen not merely from disappointed expectations, but from the sacrifice, voluntarily made, of advantages which he had actually enjoyed, and of which he might have retained possession.

"It cannot be satisfactory either to the imperial or to the colonial government, that an individual should be placed in such a position from such a cause, and Her Majesty's Government hope that the colonial government will readily co-operate with them in finding a solution of the difficulty, which has hitherto impeded a satisfactory settlement of the case.

"It appears to Her Majesty's Government that this object would be best attained by the appointment of a commission to examine and report upon the fair amount of compensation which would be due to Mr. Ryland under the terms of Lord Sydenham's guarantee.

"Should it appear from their report, that a certain amount of compensation is still due to Mr. Ryland, Her Majesty's Government would be prepared to propose to Parliament to share equally with Canada the burden of providing for the payment of that amount to Mr. Ryland."

12. The Canadian Government acceded to the proposal that a commission should be appointed, but with the understanding that it should not be thereby pledged to pay any part of the compensation.

13. Mr. Carter, Chief Justice of New Brunswick, was appointed commissioner. The basis of that gentleman's award, which by no means met the expectations of Mr. Ryland, was the guarantee of Lord Sydenham, already quoted. The Chief Justice in his award makes the following observations, viz. :—

\* \* \* \* \*

"The construction of this guarantee is perfectly clear, and free from any doubt. It guarantees Mr. Ryland an annual income of £515 currency, to be derived from the emoluments of some public office, or to be made up from some other source, in the event of these emoluments not being equal to that amount, and in furtherance of such guarantee, the registrarship of Quebec is offered to Mr. Ryland,"

\* \* \* \* \*

"I proceed to state the principle on which it appears to me the amount due to Mr. Ryland, under Lord Sydenham's guarantee, should be ascertained, and the result of the application of that principle. I have already stated what appears to me the plain and obvious construction of that guarantee, viz., to secure Mr. Ryland a clear annual income of of £515 currency. It was, therefore, necessary to ascertain in each year, since the giving of the guarantee, whether the profits of his office have been equal to the amount, and, if not so, how much has been the deficiency, wherever there has been such deficiency. I think Mr. Ryland should be allowed such an amount as would have made up his income for the year to £515, and interest on such amount from the end of each year. Mr. Ryland has received, since his relinquishment of the office of clerk of the executive council, the annual sum of £111 from the Canadian Pension Fund, which, I think, ought, *pro tanto*, to be taken as fulfilment of the guarantee. The payment did not commence till 1845, when three years' arrears were paid, and, I think, Mr. Ryland should be allowed interest on £111 for these years. This allowance seems to have been suspended from the end of 1845 till the commencement of 1851, when the arrears were paid, and I think interest should be allowed for that period. In ascertaining the amounts of annual receipts and expenditure in the offices of Mr. Ryland, at Quebec and Montreal, I have been, of necessity, obliged to rely on the returns made to the Canadian Government, and the books of the officers, nor have I the least reason to doubt the correctness of the statements derived from these sources."

\* \* \* \* \*

"I annex to this report a sheet marked (K), showing the manner in which I have ascertained the amount of £7,735 12s. 6d. currency, which amount I beg to report as what appears to me the fair amount of compensation due to Mr. Ryland, under the terms of Lord Sydenham's guarantee, up to the end of the present year (1856). I am not at all sure that my instructions require me to go any further than this, but inasmuch as Mr. Ryland may have further claims, under Lord Sydenham's guarantee, should his office, in future years, not yield him an income of £515 currency, I venture to make one or two suggestions for the immediate settlement of future claims. One mode which might be adopted, with the sanction of the Canadian Government, would be to increase Mr. Ryland's allowance of £111 per annum to £515 from the Pension Fund of Canada, on Mr. Ryland resigning his present office. Should this not be practicable, as I find the average amount for the last seven years, chargeable under Lord Sydenham's guarantee, would be about £140 per annum, I should say that if a sum of £1,264 7s. 6d. were added to what I have already reported as due in the past, making in all the gross sum of £9,000 currency, that would be a fair and proper amount to be paid to Mr. Ryland as a final settlement of all his claims under the guarantee of Lord Sydenham, the annual allowance of £111 from the Pension Fund being of course, continued."

14. It will be observed that Chief Justice Carter took the view (which appears to be clearly correct) that the compensation to be given Mr. Ryland under Lord Sydenham's arrangement was as follows:—

1. That he should become the registrar of Quebec, for which office the registrarship of Montreal was afterwards substituted.

2. That in case the emoluments of the office should in any year not yield him £515 currency, being the amount of the retiring allowance to which Mr. Ryland was, at the time of the arrangement, entitled, the amount should be made up to him.

3. That the Canadian pension of £111 received by Mr. Ryland should be taken, *pro tanto*, as a fulfilment of this guarantee.

Chief Justice Carter, upon this basis, calculates the amount due up to the end of 1856 at £7,735 12s. 6d. currency, and being the calculation of the emoluments of the registrarship of Montreal for the future, upon the average of the preceding seven years, he estimates a gross sum of £1,264 7s. 6d. as being the capitalized value of the future claims of Mr. Ryland, by reason of future deficiencies in these emoluments.

15. The Imperial Government declined to accept, in the terms of Lord John Russell's despatch, the award of Chief Justice Carter.

16. The Canadian Government at first declined to bear any portion of the expense, but ultimately, on the 27th October, 1858, they advised that Parliament should be recommended to pay Mr. Ryland one half of the award. This recommendation was made and acted upon.

17. It seems to them, that the compensation of Mr. Ryland consisted in part of the office to which he was appointed, and, in addition, of a money payment to meet the amount by which the annual emoluments of the office might be less than his retiring allowance; that the money payment was finally settled by the award of Chief Justice Carter, and that to deprive Mr. Ryland of his office would be to disturb the arrangement.

18. It is quite plain that the private or vested interests of an individual are not to be suffered to over-ride the interests of the public, and that governments and legislatures are entitled, notwithstanding the existence of such private or vested interests, to alter the compensation of public officers in whatsoever way the public good may demand; but, even when the public officer has received his appointment in the ordinary way, and not as a matter of contract, it seems to be the general rule that he should receive reasonable compensation for individual loss inflicted on him by the change.

19. This rule is, however, subject to modification, when it is considered that salaries have become excessive, or that the fees of an office have increased beyond reasonable limits, in which cases reductions have occasionally been made without compensation. Besides, a violation of this general rule, in matters purely local, would not, by itself, furnish ground for disallowance.



20. Mr. Ryland, however, puts his case on somewhat a higher ground, pointing out that he was absolutely entitled to a retiring allowance of a considerable amount, and that it was, in part, compensation for this allowance, that he received his office.

Interference with his emoluments, under such circumstances, may fairly be said to be open to objections more serious than those which might apply were he an ordinary office holder ; and certainly, in case the public good requires such interference, it should be accomplished in such a manner as to do the individual the least possible injury.

20½. By the statements which the undersigned has quoted it would appear that, under the Act in question, Mr. Ryland's registration district is to be divided into three parts. That the more valuable and remunerative divisions are to be taken away, and that he is, without compensation for the loss of the others, to remain registrar of the least valuable, and, as he alleges, an absolutely unremunerative division.

21. Thus, both the general rule to which the undersigned has adverted and the special circumstances of Mr. Ryland's case, appear to have been ignored.

No provision is made to compensate him for the loss he must sustain by the withdrawal of any part of his district.

Circumstances may be conceived which might justify the absence of such a provision ; but he is not even retained as the registrar of the most valuable of the new districts, and the undersigned is unable to reconcile with a just appreciation of Mr. Ryland's position, the abstraction from him, in order to confer it on another, of all that makes his office valuable.

22. Upon the petition of the landed proprietors, capitalists and other citizens of Montreal, the undersigned would observe :

That the signatures to the petition are of the most respectable and weighty character, and that its representations do certainly deserve the greatest consideration at the hands of those entrusted with legislative power in the matters to which they relate. These matters, however important, are nevertheless essentially of a local character.

The representations should be addressed to the government and legislature of the province of Quebec, and had they stood alone, the undersigned could only have recommended the reference of the petitioners to the local government and legislature.

23. But under the peculiar circumstances which attend the case of Mr. Ryland, involving, as the discussions show, the unsettlement of arrangements of long standing, in which the imperial as well as the colonial governments were concerned, raising also plausible claims for consideration, and, as Mr. Ryland insists, strong claims for compensation at the hands of the Imperial Government, of the Canadian Government, which is bound to meet the pecuniary liabilities of the late province, and of the governments of Ontario and Quebec, which are bound practically to indemnify the Canadian Government in respect of any such pecuniary liabilities, the undersigned, who is disposed to believe that the considerations to which he has adverted cannot have been brought to the attention of the local authorities, would recommend that they should be afforded the opportunity of reconsidering the legislation in question, with the light thrown upon it by the petitions and representations before him.

24. Such a course will have the incidental advantage of giving an opportunity to consider also the representations of the general petitioners against the legislation.

25. The Act, although passed on the 23rd February, 1875, has not yet been put in force. It would, therefore appear that there is no urgent necessity for its being acted upon, and the local legislature is summoned for despatch of business on the 10th day of November next, so that it will be possible before the period arrives for determining as to its disallowance, to take the sense of the legislature on the question of its amendment or repeal.

The undersigned is not to be understood as having come to a final conclusion on the question whether Mr. Ryland would, on the passing of such an Act, have pecuniary claims capable of being forced against the Government referred to, or whether such an Act, if passed with full knowledge and after full consideration of the facts, should be persistently disallowed.



These are questions which, he ventured to hope, would not arise, and the authoritative determination of which it would, he submits, be better to postpone.

26. The undersigned recommends that a copy of the petition of the inhabitants of Montreal, to which he has referred, and of this report, should be transmitted to the Lieutenant-Governor of Quebec, for the information of his government, with the request that the subject should be considered, and that his Excellency should be informed before the expiration of the time for determining as to whether the Act should be disallowed, of the views of the local government, and whether it is prepared to invite local legislation to repeal the Act, or to amend it in any, and what particulars.

EDWARD BLAKE,  
*Minister of Justice.*

*His Honour the Lieutenant-Governor of Quebec to the Secretary of State of Canada.*

GOVERNMENT HOUSE, QUEBEC, 6th November, 1876.

SIR,—I hastened to submit to my government the Order of the Honourable the Privy Council, bearing date the 25th October ultimo, as well as the report of the Honourable the Minister of Justice, and the petition of the citizens of Montreal, respecting the Act of the legislature of Quebec, 38 Vict., chap. 17: "To divide the registration division of Montreal into three Registration Divisions,"—and upon the advice of my ministers, the honourable members of the executive council of the province, I have the honour to submit for the gracious consideration of his Excellency the Governor General, the following remarks:—

My government has always endeavoured, with respect to the measures which it submitted to the legislature of the province of Quebec, to confine itself within the limits assigned to it by "The British North America Act, 1867"; and the statute respecting the registration division of Montreal, assented to on the 23rd December last, is, especially, wholly within the classes of subjects for legislation, which are exclusively assigned to it by the imperial Act aforesaid:—

Before submitting to the legislature the measure in question, my government knew perfectly the position of the former registrar of Montreal; but, in order to become acquainted with that position in a more full and satisfactory manner, in order clearly to ascertain whether the public interest demanded changes in the state of affairs then existing in the registration division, and in order to avoid committing an injustice towards the registrar, as well as to ascertain the manner in which the latter carried out the duties of his office, an inquiry was ordered by an Order in Council of the 21st December, 1874, and that inquiry closed on the 7th January, 1875, during the very session in which the measure was introduced.

From the evidence adduced in this inquiry, as well as from the information already in the possession of the government, the measure was considered necessary, and in consequence it was submitted to the legislature and passed by it on the 17th February, 1876.

Mr. Ryland, who now complains of this measure, had all the time necessary to present to the Quebec legislature the objections which he alleges he has to raise against that legislation, and the allegation made by Mr. Ryland, and by the signers of the petition submitted to his Excellency that this legislation was carried through "in a precipitate manner, and without regard for the desires and interests of the public," is entirely gratuitous.

My government maintain that the registration division, of which Mr. Ryland is to remain titular, far from being unremunerative, yields and will hereafter continue to yield an income, more than sufficient to represent the pecuniary equivalent established by the award of Chief Justice Carter, on the guarantee of Lord Sydenham. And if Mr. Ryland had asked in the ordinary way in such cases, the redress of an alleged grievance of which he complains, he would have been allowed to furnish evidence to the

contrary, and to show that his office, as reduced by the new legislation, would no longer represent that pecuniary equivalent.

Last Session (37 Vic.), with a new representation, resulting from the general elections of 1875, also went by, without Mr. Ryland thinking proper to enter any protest, or make any complaint.

I shall take the liberty in this connection of asking his Excellency's special attention to the strange course pursued by Mr. Ryland, who refuses or neglects to submit his grievances to the legislative tribunal accessible to every citizen, and then comes forward and asks for the disallowance of a law, which he did not think proper to oppose. If Mr. Ryland is suffering a wrong, which he maintains to have been caused by an Act of the legislature, should he not, in the first place, claim compensation from the power which inflicted it on him? While affirming the principle that the government and the legislature possess the absolute right to determine the compensation to be awarded to the subject whose personal interests are injured by a legislative Act, the government of Quebec maintain that, in this case, it was not their intention, and that they did not, in fact, deprive Mr. Ryland of the pecuniary compensation which he might claim in virtue of Lord Sydenham's promise, and of the award of the commissioner, Chief Justice Carter. Far from it, my government have, up to this moment refrained from acting on their undeniable right, which they might have exercised in view of the facts brought to their knowledge, of entirely cancelling Mr. Ryland's commission as a public officer.

My government are desirous of faithfully respecting the engagements entered into by those who preceded them in power; but, on the other hand, they must jealously guard the immunities of the provincial legislature, when that body acts within the constitutional limits assigned to it; and I respectfully submit to his Excellency that, in this case, the legislature of Quebec has not over-stepped those limits.

The essentially local character of the measure not being contested, and the facts represented by Mr. Ryland in support of his petition being incorrect, in their most important part, I would respectfully represent to his Excellency, that my government could not, with a due regard to its own dignity, and to the respect it owes to the legislature, propose the repeal of the law in question.

I desire, in conclusion, to assure his Excellency, that the government of the province of Quebec is quite disposed to do full and entire justice to Mr. Ryland, and that the share of obligations to which the province is in honour bound by the engagements mentioned by the Honourable Minister of Justice in the report transmitted to me, has hitherto been, and will hereafter be, honourably and scrupulously fulfilled.

I have, &c.,

ED. CARON,  
*Lieutenant-Governor.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th November, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th November, 1876.

*To His Excellency the Governor General in Council:*

Upon the despatch of the Lieutenant-Governor of Quebec of the 6th November, 1876, referring to the Order in Council of the 25th October, 1876, with reference to the Act for the purpose of dividing the registration division of Montreal into three divisions, the undersigned begs to report as follows:—

Without entering into a minute analysis of the representations, and not desiring to be understood as concurring in all the views put forward, the undersigned submits that these representations give a different complexion to the case from that given by Mr. Ryland.



His Excellency has no satisfactory means for investigating further into the accuracy of that gentleman's statements, and under the circumstances, as between the assertions of a provincial government, and an interested individual, faith and credit must be given to the representations of the former.

The undersigned is not without apprehension that difficulties may arise from the measure, and he would have felt greater embarrassment as to the course to be recommended, but for the assurances contained in the Lieutenant-Governor's despatch, that his government is desirous of respecting faithfully the engagements made by the powers which preceded it, and from which it springs; and is altogether disposed to accord full and entire justice to Mr. Ryland, and that the share of the obligations to which the province is in honour bound by the engagements of which the undersigned speaks in his report, has been, and will for the future be, honourably and scrupulously fulfilled.

The undersigned foresees the probability of a divergence of opinion as to the nature and extent of the engagements, and of the action of the provincial government and legislature on the question, but he submits that it must, after these assurances, be assumed that right will be done.

The undersigned has, throughout, fully recognized the local character of the Act in question, and the view that its policy is for the consideration of the local legislature, he submits that the representations and assurances contained in the Lieutenant-Governor's despatch so far mitigate, even though they may not altogether remove, the special difficulties adverted to in his former report, as to render it proper not to interfere with the operation of the Act, and he recommends accordingly.

He recommends further, that Mr. Ryland should be informed that his Excellency has not thought fit to exercise the power of disallowance in reference to this Act.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th November, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th October, 1876.

*To His Excellency the Governor General in Council :*

With reference to the statutes of Quebec, passed in the fourth session of the second legislature (38th Vic.), 1875, the undersigned begs to report as follows :—

Chapter 28. "An Act to amend the Act concerning the erection and division of parishes and the building and repairing of churches, parsonage houses and church yards and fabrique meetings (C.S.L.C., cap. 18) and to detach a certain territory from the mission of the Lake of the Two Mountains, and to annex the same to the parish of the patronage of St. Joseph, for civil purposes."

This Act alters some provisions of the Consolidated Statutes for Lower Canada, chapter 18, regulating the procedure for the erection and division of parishes, and the building and repairing of churches, &c., by permitting the revocation, on the demand of the majority of the inhabitants, of the decree, allowed by the commissioners in such matters, and by making some minor amendments. The 4th section provides that a part of the territory should be detached from the mission of the Lake of Two Mountains and attached to the parish of the patronage of St. Joseph for all civil purposes, as described in the canonical decree of the Bishop of Montreal bearing date the 26th August, 1874. This section appears in effect to accomplish a change which could have been made under certain regulations by the existing law. Somewhat similar legislation has already taken place, as appears by the Consolidated Statutes already referred to; the undersigned refers to his observations to be made with reference to chapter 29, and does not recommend any interference with the operation of the statute.

Chapter 29. "An Act to amend chapter 18 of the Consolidated Statutes of Lower Canada."



This Act, after reciting that the civil erection under the chapter referred to, of certain parishes situated partly in the county of Hochelaga, would have the effect of establishing new municipalities in a territory already organized for municipal purposes, and that it is not advisable that the civil erection of such parishes should produce such effect, declares these parishes to be and recognizes them as Catholic parishes, to the same effect as if they had been recognized, erected and ratified for all civil purposes, under the statute referred to, save that nothing in the Act is to have the effect of modifying in any manner, the limits of the city of Montreal and of the several other municipalities in which such parishes are situated, and that such municipalities are to continue to exist with their limits and extent, as if the Act had not been passed.

The 3rd section provides that each parish thus recognized, is so recognized subject to the provisions contained in the decree of erection relating to it, as amended by the Holy See and published in 1874 in such parish. This provision, applying as it does to a decree already known and published in its amended form, appears to be founded substantially on precedents to be found in the Consolidated Statutes of Lower Canada.

The legislature must be presumed to have confirmed these instruments after due consideration of their effect.

Some misapprehension has been created as to the meaning of this clause, from the inaccurate description of the clause used in the *breviate*, which, however, of course does not alter its true operation.

The 4th section provides that the meetings for the election of churchwardens, for the rendering of accounts, and for all purposes requiring general parish meeting in these parishes, shall consist of the old and the new churchwardens, and of the persons elected in compliance with the ordinance of the bishop, to form the board or body of the *fabrique*.

This section appears to provide for these particular parishes, a different system from that which, under the Consolidated Statutes, is applicable to Roman Catholic parishes generally, throughout Quebec, though the exact nature and extent of the divergence is not disclosed.

The attention of the undersigned has been called to a probable inconvenience which would arise from a departure, in particular cases, from the general well-known and satisfactory system provided by the statute, but, however grave this inconvenience may be, the undersigned presumes that this enactment (made, as it was, with reference to a certain specified ordinance) was framed after due investigation and after due opportunity given to the parties affected, to present their views, and upon particular ascertained circumstances differing these from the other parishes, and the undersigned does not recommend any interference with the operation of the statute.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 21st of November, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th November, 1876.

With reference to the minute of council of 25th October, 1876, upon the subject of certain of the Quebec Statutes, 38 Victoria, 1875, the undersigned begs to report that no communication beyond a formal acknowledgment having been received from the Lieutenant-Governor of Quebec, with reference to the observations made in the report of the undersigned approved by the said minute, a telegram was, on the 13th instant, despatched by the Secretary of State to the Administrator of Quebec, as follows:—

“Please inform me, for the information of his Excellency, whether it is proposed, with reference to the order in council of 25th October, 1876, relative to the provincial Acts of 1875, to promote amendatory legislation with respect to the Acts objected to, particularly chapters 79 and 81. Please reply by telegraph.”

To which was received, on the next day, the following reply:—

"In answer to your telegram of yesterday, I beg to state, for the information of his Excellency, that a reply to the order in council of the 25th of October last, relating to Acts of the province of Quebec, passed in 1876, is in course of preparation, and will shortly be forwarded.

"Amendments to chapters 79 and 81 will be proposed and passed during the present session."

Thereupon the following telegram was despatched by the Secretary of State to the Administrator :—

"Reply referred to in your telegram to-day should be forwarded at earliest moment so that his Excellency may consider it before the time for dealing with the Act expires. His Excellency trusts reply will be mailed to-morrow."

And this day has been received a despatch from the administrator, repeating the information contained in the telegram, that it was the intention of the government of the province of Quebec to submit to the legislature bills, with a view to amending chapters 79 and 81 of the Acts referred to.

No communication has been made as to the intention of the government with reference to some other Acts objected to, and the time within which disallowance can take place expires so shortly, that it is necessary to deal at once with the matter.

It would have been more satisfactory had fuller information been conveyed to his Excellency as to the intentions of the provincial government with reference to the several Acts objected to, but having regard to the communications which have been received and to the nature of his objections, the undersigned recommends, in reliance upon the assurances contained in these communications, that the several Acts should be left to their operation.

It is proper to add that, although in the telegraph communication to the administrator, special attention was called to two of the statutes, in consequence of the character of the objections taken to them, these are not the only Acts objected to, and it is hoped that the attention of the government will be also directed to the other Acts objected to.

The undersigned recommends that the result of this report be communicated to the Lieutenant-Governor of Quebec.

EDWARD BLAKE,  
*Minister of Justice.*

## QUEBEC, 39TH VICTORIA, 1875.

### 1ST SESSION—3RD LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd September, 1876.

With reference to the statutes of the legislature of Quebec, passed in the 38th Victoria, 1875, the undersigned begs to report as follows:—

The following Acts do not appear to call for remark, or for the exercise of the power of disallowance:—Chapters 1, 3, 4, 8 to 18, 21 to 32, 34, 37 to 40, 44, 46 to 49, 51 to 55, 57 to 59, 61, 65 to 75, and 77 to 88 inclusive.

Chapter 2. “An Act respecting the construction of the Quebec, Montreal and Occidental Railway.”

This Act provides for the construction, as a public work of the province of Quebec, of a railway from the port of Quebec to such point in the county of Pontiac as may be most suitable for connecting hereafter the said railway with the subsidized portion of the Canada Central Railway, and with any other railway, as the Lieutenant-Governor in Council may hereafter decide.

The 22nd section authorizes the commissioners to make arrangements with the Canada Central Railway Company, for the extension of the Canada Central Railway from the eastern terminus of the subsidized portion thereof as may be selected, to the Ottawa river, opposite the western terminus of the railway thereby authorized to be constructed, or for the construction of a bridge over the said river, or to make arrangements for the transit of rolling stock, etc., over the Canada Central and Canada Pacific Railways.

The Act does not purport to, nor could the local legislature, give power to the Canada Central Railway Company, to enter into the contemplated arrangements, and though it may perhaps be questionable whether the authority given to the Commissioners is not more extensive, than can properly be given by the provincial legislature, yet having regard to the 23rd section, which expressly contemplates the authorization by the Parliament of Canada of any construction outside of the province of Quebec by the commissioners, the undersigned does not recommend the disallowance of the Act.

The 43rd section invests the railway to be constructed under the Act, so far as the legislature can do so, with all the rights, franchises, &c., granted by the Parliament of Canada, to the Montreal, Ottawa and Western Railway Company.

It would seem that the local legislature cannot affect the transfer of the franchises, and some, at any rate, of the rights granted by the Parliament of Canada to the Montreal, Ottawa and Western Railway Company, and therefore this clause, although guarded in its language, is not free from objection.

Chapter 5. “An Act to amend the Act 38 Victoria, chap. 4, respecting the Manufacture of Sugar from Beet Root.”

This Act increases to \$7,000 from \$5,000 the annual subsidy for this purpose. The undersigned refers to his report upon the original Act, (*See ante* page 261), but does not recommend disallowance.

Chapter 6. “An Act to further amend the Quebec License Act (34 Vic., chap. 2), and the several Acts amending the same, and to extend the application thereof.”



This Act contains some provisions open to the same questions as has been already stated in several reports to be *sub judice*, as to the competency of the local legislatures to affect trade and commerce by such legislation.

The undersigned suggests that, for the reasons given in other cases, the Act should not be interfered with.

Chapter 20. "An Act respecting the compilation of Statistics of Births, Marriages and Causes of Death in the Province."

This Act deals with the subject of statistics, but similar legislation has been suffered to go into operation in other provinces, and the undersigned recommends that this Act should be left to its operation.

Chapter 33. "An Act to amend and consolidate the various Acts respecting the Notarial Profession in this Province."

Section 7 provides that any person assaulting a notary in the execution of his duty, or opposing him therein, is guilty of a misdemeanour, and may, on conviction, be condemned to the same punishment, as if he had been convicted of an assault on a peace or revenue officer in the execution of his duty. This section trenches upon the Criminal Law, and the undersigned recommends that the attention of the Lieutenant-Governor should be called to it, with a view to its repeal, before the time arrives within which the Act can be disallowed.

Chapter 41. "An Act to annex certain portions of the Township of Shawinigan, in the County of St. Maurice, to the Parish of St. Flore, in the County of Champlain, for School, Municipal and Registration purposes, and for the purposes of Parliamentary representation."

The undersigned refers to his report upon chapter 7 of the statutes of the preceding session, (*See ante* pages 261 & 262), with reference to the use of the word "parliamentary," and recommends that the attention of the Lieutenant-Governor be called to the section, with a view to its amendment.

Chapter 42. "An Act to detach a certain portion of the County of Lotbinière and to annex it to the County of Beauce, for School, Municipal and Registration purposes, and those of Parliamentary representation, and to civilly erect the Parish of St. Séverin."

The use of the word "parliamentary" is objectionable, as suggested with reference to chapter 41; and the undersigned suggests the adoption of the same course.

By this Act the parish of St. Séverin, as erected for religious purposes by a decree of the 20th September, 1872, of the Archbishop of Quebec, is recognized in as full and complete a manner for all civil purposes whatever, as if it had been erected under Chapter 18 of the Consolidated Statutes of Lower Canada.

The undersigned refers to the remarks he has already made in his reports on the statutes of this and of the preceding session on similar legislation, and recommends that this provision should be left to its operation.

Chapter 43. "An Act to detach a certain part of the County of Bellechasse and to annex the same to the County of Montmagny for Parliamentary, Registration, Municipal and School purposes," is objectionable in its title, and in the language used in the 1st and 3rd sections, for the reasons referred to in the case of chapter 41, and the undersigned recommends the adoption of the same course.

Chapter 45. "An Act to erect the Village of Bagotville in a separate municipality."

Section 4. "The municipal council of the said village may impose upon merchants and traders, strangers to the said municipality, and who trade there, such duties and taxes as the council may deem expedient, and compel them to pay for their license the sum so imposed."

Under this section taxation of an extremely objectionable kind might take place, and the undersigned would be disposed to recommend that the attention of the Lieutenant-Governor should be called to the section, with a view to its repeal or amendment, but for the fact that several provincial Acts had been left to their operation, giving somewhat similar powers to councils of municipalities;

Under these circumstances, it seems better not to interfere with legislation of the same character, when confined to the action of municipal bodies, at any rate, until experience demonstrates that an improper use is being made of the power; but the undersigned thinks that any extension of the principle, not sanctioned by previous precedents, would require grave consideration.

Chapter 50. "An Act to incorporate the City of Sherbrooke."

Section 33, subsection 4, which authorizes the council to pass by-laws for preventing thefts and depredations which may be committed at any fire in the city, and for punishing any person who shall resist or ill-treat any officer or member of the council, appears to trench upon the criminal law.

Section 43 provides for the punishment of proprietors or agents, willfully granting false certificates or receipts, and tenants presenting false certificates or receipts, the offence would seem to come within section 110 of the Larceny Act, and the section appears to trench upon the criminal law.

The undersigned recommends that the attention of the Lieutenant-Governor should be called to these sections.

Chapter 56. "An Act to amend the Act incorporating the Montreal, Portland and Boston Railway Company."

By the Act of the legislature of Quebec, 35 Victoria, chap. 29, 1871, the Montreal, Chambly and Sorel Railway Company was incorporated for the purpose of constructing a railway from Sorel, by Chambly, to Montreal, and from Montreal to the province line at or near Philipsburg, with the right of constructing the railway on either or partly on both sides of the river Richelieu, and for building a bridge across that river, with certain provisions with reference to the Grand Trunk Railway.

By the Act of the same legislature, (1872) 36 Vic., chap. 46, some minor amendments were made in the Act of incorporation.

By the Act of the Parliament of Canada, 36 Vic., chap. 87, (1873) it was recited that the railway company, incorporated under an Act of the legislature of the province of Quebec, had prayed for power to issue promissory notes, and to enter into and conclude agreements and arrangements with foreign railway companies; and it was enacted as follows:—

1. The railway was declared to be a work for the general advantage of Canada.
2. The company was empowered to become parties to promissory notes and bills of exchange for sums not less than \$100; any such promissory note, made or endorsed, and any such bill of exchange drawn, accepted or endorsed by the president or vice-president of the company, and countersigned by the secretary and treasurer of the company, and under the authority of a majority of a quorum of the directors, to be binding on the company; such note or bill of exchange to be presumed to have been made with proper authority until the contrary be shown; in no case was it necessary to have the seal of the company affixed to any such note or bill of exchange, nor were the president or vice-president, or the secretary and treasurer individually responsible for the same in any manner, unless when issued without the authority of the board of directors—such promissory notes or bills of exchange were not to be payable to bearer, or to be of a nature to be used as money, or as the bill or note of a bank.
3. The railway company was empowered to lease the railway in whole or in part, or for leasing to, or from, any Canadian or foreign railway company any railway, or any part thereof, or for leasing from such company or companies, any bridges, &c., and also gives other powers.

By an Act of the Parliament of Canada, passed in 1875, (36 Vic., chap. 70) the name of the company was changed to the "Montreal, Portland and Boston Railway Company."

The Act now under consideration makes some changes in the Act of incorporation, and gives some powers to the directors of the company.

By the "British North America Act," section 92, the powers of provincial legislatures, with reference to local works and undertakings, are expressly declared not to extend to the works which, before or after their execution, are declared by the Parliament of Canada to be for the advantage of Canada, or for the advantage of two or more of the provinces.



The embarrassment and confusion which would result from concurrent legislation, under the circumstances detailed, are too obvious for argument.

The undersigned recommends that the attention of the Lieutenant-Governor should be called to this Act, with a view to its repeal before the time arrives within which it must be disallowed.

Chapter 60. "An Act to incorporate the Patriotic Insurance Company of Canada."

The 7th section of this Act authorizes the company to make contracts of life insurance with any person or persons, and to carry on the business of life insurance in all branches and modes of conducting the same, and on any plan or principle as the directors may determine and direct, and generally to enter into any transaction depending upon the contingency of life, and on all other transactions usually entered into by life insurance companies, and also to insure against loss by fire or the perils of the sea and inland navigation.

Upon this Act the undersigned refers to his report upon chapter 81 of the Statutes of Quebec of the preceding session, and recommends that the attention of the Lieutenant-Governor should be called to the wording of this clause, with a view to its amendment, so as to limit the operation of this company before the time arrives for deciding as to its disallowance.

The 27th section provides that any secretary, clerk or other officer of the company, guilty of any designed fraud or falsehood in any matter or thing pertaining to his office or duty, shall be guilty of a misdemeanour, and any person falsely personating another, at any election of directors for the company, or signing, or affixing the name of any other person, a member of the company, to any appointment of a proxy, shall be guilty of a misdemeanour.

The 28th section provides that in any suit and prosecution in which the company may be at any time engaged, any officer or stockholder in the said company shall be a competent witness.

The undersigned recommends that the attention of the Lieutenant-Governor should be called to these sections, with a view to the repeal of section 27, and the amendment of section 28, as trenching on the criminal law.

Chapter 62. "An Act to change the name of 'The Provincial Permanent Building Society' to that of 'The Provincial Loan Company,' and to extend the powers thereof."

The 9th section authorizes the company to make advances to any person, &c., upon securities, at such rates of discount or interest as may be agreed upon. The 11th section authorizes the company to receive money on deposit, and also to pay such rate of interest as may be deemed advisable.

It is questionable whether this is not an interference with the law of interest, and *ultra vires*, and the undersigned suggests that the attention of the Lieutenant-Governor should be called to it.

Chapter 63. "An Act to change the name of the 'Montreal Permanent Building Society' to that of the 'Montreal Loan and Mortgage Company,' and to extend the powers thereof."

The 11th section authorizes the company to receive money on deposit, and to issue debentures bearing such rate of interest as may be deemed advisable.

To this provision the observation made on chapter 62 applies.

Chapter 64. "An Act respecting a company incorporated under the name of 'Le Crédit Foncier du Bas-Canada.'" The preamble recites that, whereas, the company, a body politic and corporate, and duly incorporated under the Statutes of Canada, 36 Victoria, chap. 102, have, by petition, represented that it is in the interest of such corporation, as well as in that of the public, that their Act of incorporation should be recognized by the legislature of Quebec, and the powers granted to them should be confirmed and legalized within the province of Quebec, in so far as that legislature can grant powers to the said corporation, and that great advantages would result to the public, &c., and have prayed for the passing of an Act recognizing that incorporation, and confirming, within the limits of the province, the powers conferred upon them, in so far as this legislature can grant such powers; and, whereas, it is expedient to grant the prayer of the said petition. The enacting clauses carry out the preamble. It seems objectionable



that a provincial legislature should profess to re-grant to a Canadian company, the powers with which the Canadian Parliament has invested it. Such a course is calculated to cast doubt upon the Parliament of Canada, and to create embarrassment in deciding to which legislature, in fact, the company owes its powers, while it is difficult to see any good purpose to be answered by such a procedure.

The undersigned recommends that the attention of the Lieutenant-Governor should be called to these observations.

Chapter 66. "An Act to authorize the V. Hudon Cotton Mill Company, Hochelaga, to issue debentures on the security of the property of the said company, and for other purposes."

Section 2, subsection 4, provides that a by-law of the company shall contain the time and place of payment of such debentures, and the coupons thereof, and the rate of interest, not exceeding eight per cent, that they bear. The 9th section provides that every debenture issued, as aforesaid, shall be recoverable, although negotiated at a rate more than six per cent per annum. The undersigned submits that the attention of the Lieutenant-Governor should be directed to these sections, which seem objectionable, as trenching upon the law of interest.

Chapter 76. "An Act to incorporate the Musical Band of the Village of Lauzon."

This Act provides that the association shall have the right to ordain that any musician, whose conduct shall be irregular, shall leave the band, and return, within a delay of eight days, into the hands of the bandmaster, the instrument which he has received from the society, under the penalty of a fine of not more than two, or less than one dollar for each day during which he shall so refuse and neglect to return the said instrument, after the expiring of the said delay, or of imprisonment for thirty days, or of both at once, in the discretion of the judge, the said fine recoverable to the benefit of the said musical band in the ordinary manner. It seems extremely inconvenient to confer upon such a corporation as this the power of passing a by-law under which the subject may be imprisoned for a period of thirty days; such a power, if delegated at all, should, it would seem, be delegated only to municipal bodies.

The undersigned submits that the attention of the Lieutenant-Governor should be called to this Act, with a view to its amendment before the time arrives within which it can be disallowed.

Upon chapters 7 and 19, the undersigned proposes to report separately.

EDWARD BLAKE,  
*Minister of Justice.*

*Memorial of Insurance Agents, &c., to Secretary of State.*

MONTREAL, 20th April, 1876.

SIR,—We beg leave respectfully to refer you to a petition to his Excellency the Governor General, presented by the several insurance companies therein mentioned, doing business within the province of Quebec, and complaining of the enactment by the legislature of the province of Quebec, of an Act, intituled: "An Act to compel assurers to take out a license," and further to solicit his Excellency's attention to the prayer of the said petition.

That at the time the said petition was presented to his Excellency, the statutes of the last session of the legislature of the province of Quebec had not been communicated to him or to his advisers. And we understood that it was therefore impossible to take the prayer of the said petition into consideration at the time. But that, as since that period, the Acts of the said legislature, during the said last session thereof, have been officially promulgated and circulated, under the authority of the government of the province of Quebec, we presume that the difficulty in the consideration of the question which then existed is now removed.

We have the honour respectfully to remark, that a further examination of the said Act and of its effects have fully convinced the signers of the said petition that the representations contained in it were rather under than over stated, as to the injurious and arbitrary character of the said legislation, and as an instance of the extent to which trade will be affected by the operation of that Act, your petitioners beg leave to mention that five of the companies whose names are appended to the said petition will be taxed under its provisions to the extent of about \$3,000 each per annum; an amount which, we venture to say, is unparalleled in the history of similar legislation.

We therefore most respectfully beg that his Excellency will be most graciously pleased to take the said Act, and the prayer of the said petition into consideration, and will disallow the said Act as unconstitutional.

We have, etc.,

GILLESPIE, MOFFATT & CO.,  
Agents "*Phoenix*."

*Memorial of Representatives of Insurance Companies.*

To the Right Honourable Sir Frederick Temple, Earl of Dufferin, Viscount and Baron Clandeboye, etc., Knight Commander of the Most Honourable Order of the Bath, Governor General of Canada and Vice-Admiral of the same :

The petition of the undersigned representatives of insurance companies transacting business in Canada, respectfully sheweth :—

That your petitioners are the chief agents and accredited managers of the under-mentioned insurance companies, having their principal office or place of business at the cities of Montreal, Quebec or Toronto, and carrying on their business throughout the Dominion of Canada ;

That the said insurance companies have been heretofore established and incorporated under existing Acts of the Parliament of Canada, or the legislature of Canada, or under the United Kingdom of Great Britain and Ireland, or of foreign countries, for the business of life, fire and inland marine insurance, which they have carried on in Canada under the powers granted to them by their respective charter incorporations, and under the authority and sanction of the laws of the Dominion ;

That, under the policy of the Dominion, laws for insurance companies generally, and specially under the Dominion Acts 31 and 34 Vic., respecting life insurance, and of the 38th Vic., to amend and consolidate the several Acts as regards fire and inland marine insurance, the above mentioned insurance companies have been, and still are, expressly licensed by the Dominion Government, under the authority of the said general Acts of the Parliament of Canada and of the provinces thereof, without limitation or restriction, and are still acting under general insurance business licenses, throughout the Dominion aforesaid ;

That the exclusive legislative powers of the Parliament of Canada, under the "British North America Act" of 1867, expressly embrace the general subjects of trade and commerce in Canada to their fullest extent, necessarily including various special matters covered by those special terms—among others insurance, in general, which is confessedly an important business of trade, and a subject of a commercial nature, and, as such, exclusively treated by the policy and legislative authority of the Dominion, as represented by its insurance Acts above named and referred to, which direct the issue by the Dominion authorities, of licenses for carrying on insurance business in every part of its Dominion, under the privilege and protection of its own license therefor, wheresoever the head office or chief agency of the assurers may be placed, for the convenience of their general business ;

That the Dominion license, in this respect, is necessarily paramount and exclusive in its general privilege of insurance business in every part of the Dominion, over all merely



provincial legislation, or assumption of legislative powers by the provinces of the Dominion, obstructive of, or interfering with, the uncontrolled effect of the Dominion license, which is not susceptible of being brought into conflict by provincial legislation ;

That by a recent Act of the legislature of the province of Quebec, intituled : " An Act to compel Assurers to take out a License ;" its provisions are obligatory upon all persons or companies, incorporated or unincorporated, or carrying on the business of assurance on life, or against fire, &c., and every other assurance business whatsoever, other than marine insurance exclusively, to take out from the provincial government an annual license on the 1st May for the transaction of their assurance business, and to pay a price for such provincial license as regulated by the said Act, and in contravention whereof the insurance policies, &c., issued and given by the assurers, are made to have no effect either in law or equity, with the addition for each omission of the payment of the price regulated in the manner directed by the Act, of a penalty against the assurer not complying with such regulation, of fifty dollars in money, or its equivalent, imprisonment for three months, and for the enforcement and application of the provincial Act ; subjecting the assurers to the provisions of the Quebec License Act of 1870, respecting local licenses, and the duties and obligations of the persons locally bound to hold such provincial licenses ;

That the provincial legislature of Quebec has, in its said recent Act, intituled as aforesaid, exceeded the legislative authority conferred upon it by the " British North America Act, 1867," from which alone it derives its legislative powers, and by which its legislation is restricted exclusively to matters of a provincial or local nature ; and among others in that Act expressly named, to the making of provincial laws for shop, saloon, tavern, auctioneer and other licenses, to wit : " of a kindred local occupation or character, in order to the raising of a revenue for provincial, local or municipal purposes," as evidenced by the said Quebec License Act of 1870, which is strictly within the legislative attributes of the said province ;

That the said recent Act of the legislature of Quebec, in its inclusion within the generality of its subjects, of the above mentioned insurance companies in carrying on their business under the paramount authority and protection of the Dominion license throughout the Dominion, has gratuitously assumed to conflict its provincial legislation with the exclusive power and authority of the Parliament of Canada, and has, without right, interfered with the general power of the said Dominion licensed companies to transact their insurance business throughout the Dominion, freely and unrestrictedly in the province of Quebec, without being subjected to the assumption of license power therefor, by that provincial legislature ;

Wherefore, your petitioners pray that, in consideration of the premises, the Act above intituled, recently passed by the legislature of the province of Quebec, to wit : " An Act to compel Assurers to take out a License," may be forthwith disallowed under the authority therefor of the " British North America Act, 1867," and that it be declared unconstitutional.

And your petitioners will ever pray.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 27th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th October, 1876.

With reference to chapter 7 of the Acts of the legislature of Quebec, 39th Victoria, (1875) intituled : " An Act to compel Assurers to take out a License," the undersigned has the honour to report, that a petition has been presented to his Excellency from the chief agents and accredited managers of a very large number of insurance companies, carrying on business throughout Canada, including the province of Quebec, representing that their respective companies have been and are carrying on such business under the powers granted to them by law, and with the authority and sanction of the statutes of



Canada ; pointing out that their companies have been and are expressly licensed by the Canadian Government to contract business throughout Canada ; alleging that the exclusive legislative powers of the Parliament of Canada, expressly embrace the general subjects of trade and commerce ; which in the view of the petitioners, include insurance in general as an important business of trade, and a subject of a commercial nature ; alleging that the license of Canada is necessarily paramount over and exclusive of all merely provincial legislation obstructive of or interfering with its effect ; referring to the provisions of the Act now under consideration, and alleging that by its enactment the provincial government has exceeded its legislative authority and, without right, interfered with the general power of the licensed insurance companies to transact their business, without being subject to license by a provincial legislature, and praying for the disallowance of the Act.

That subsequently, a letter was addressed by the representatives of the insurance companies to the Secretary of State, referring him to this petition, and pointing out that a further examination of the Act, and its effects, have fully convinced the signers of the petition that the representations contained in it were rather under, than over stated, as to the injurious and arbitrary character of the legislation, and adding, as an instance of the extent to which trade will be affected by the operation of the Act, that five of the companies whose names are appended to the petition, will be taxed under its provisions to the extent of about three thousand dollars (\$3,000) each per annum, an amount which, in the view of the signers, is unparalleled in the history of similar legislation.

That subsequently to the receipt of this letter, a delegation on behalf of the petitioners visited the seat of government with the view of pressing upon the government the propriety of disallowing the Act. That the government was then informed that steps would probably be taken for the purpose of testing in the courts the validity of the measure.

That from the ordinary source of public information, it appears that it was arranged between the companies that one or more of them should take the necessary steps for such a test, and that proceedings have actually been taken and are now pending before the courts with that view.

The Act requires every assurer, carrying on in the province any business of assurance, other than that of marine assurance exclusively, to take out a license annually, and to remain continually under license.

The price of the license is to consist in the payment to the crown for the use of the province, at the time of the issue or delivery of any policy of assurance, except of marine assurance, and at the time of the making or delivery of each premium, receipt or renewal, respecting any policy issued before or after the coming into force of the Act, of a sum computed at the rate of three per cent as to the assurances against fire, and of one per cent as to the other assurances of the amount received as premium or renewal of assurance.

The payment is to be made by stamps to be affixed to each policy or receipt.

Persons contravening the Act are made liable to a pecuniary penalty, and in default of payment to imprisonment.

Unstamped policies, &c., are to have no effect in the courts of the province.

It is provided that the Act shall not affect any policy, premium receipt or renewal, in relation to assurances wherein the interests assured, are beyond the limits of the province.

It will be observed that much light may be thrown upon the question of the constitutionality of the Act by the decision shortly expected in the pending case as to Brewers' licenses, and in view of this and of the other legal proceedings to which allusion has been made, the undersigned recommends that any determination upon this question shall be deferred for the present.

With reference to the alleged interference by the law with Canadian legislation, and to the objections to the policy of the measure, it is to be observed that the requirement of a license is merely the form of levying the tax.

It is strictly for the purpose of revenue. The business is only affected by the amount of the tax, and the mode in which it is levied ; and is not otherwise regulated ; and the tax is a general one upon all persons and corporations carrying on the business. Nor has the Parliament of Canada adopted the policy of raising a revenue from this subject.

The requisites for procuring its license are of an entirely different character. Its object is to secure some measure of protection to the public from loss by bubble or unsafe companies.

Had the Parliament of Canada adopted this as a subject of taxation, other considerations altogether might apply, and it would become necessary to determine whether the double taxation which would under such circumstances be imposed, should be allowed. The policy of levying a tax of this nature is open to great question. It must fall, in the end, upon those interested in the assurances. It may be considered to be a tax upon providence and thrift, and its operation may have an injurious effect, far beyond what may be recompensed by its pecuniary results, but these are views which, although they should be fairly weighed, and although they might in some cases force upon the Canadian Government the necessity of disallowance, are yet subject to this observation, that the people of this province who require to raise a revenue for their local wants, and who tax themselves for the purpose, may rightly claim, and must fairly be permitted a considerable latitude in the determination what their taxes shall be, and that considerable confidence may be placed in local public opinion as a remedy for the indicated evils where they may exist.

The undersigned, however, feels bound to point out that in one particular this Act appears specially objectionable.

It is well known that the bulk of assurances on life are effected on contracts extending on the part of the company over the whole term of life or a long number of years conditioned on the payment by the insured of periodical premiums at fixed rates. This Act, however, requires payment by the companies of the tax of one per cent upon the premiums for the renewals of life assurance policies, although made before the passing of the Act.

This imposes upon the company, which has already contracted at a specific premium calculated upon various elements, not, however, including the taxation of the gross premium—a deduction, not from its net profits, but from its gross premium. The company is not in a position to recoup itself by calling upon the insured to pay the tax.

This seems objectionable in principle, and calculated to produce a feeling of insecurity abroad, with reference to provincial legislation ; and the undersigned recommends that the attention of the Lieutenant-Governor should be called to the provision, with a view to its amendment during the ensuing session, at any rate, in so far as it affects contracts made before the passing of the Act.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th December, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th October, 1876.

With reference to the following statutes of the legislature of Quebec, passed in the 39th Victoria, 1875, the undersigned begs to report :—

Chapter 36. “An Act for the civil erection of several parishes cut off from the territory of the old parish of Notre Dame of Montreal.”

This Act recites that the civil erection, under chapter 18 of the Consolidated Statutes for Lower Canada, of the certain parishes named, comprised within the old limits of the parish of Notre Dame, of Montreal, would be very costly, and that it would be very difficult to act in conformity with the said chapter, and that it is neces-



sary to civilly acknowledge these parishes, and it enacts that certain parishes thereafter described, erected for religious purposes only, by the ecclesiastical authority, with the limits and boundaries assigned to them by the canonical decrees, are declared to be and are recognized as Catholic parishes, as fully and to the same effect as if they had been recognized, erected and ratified for all civil purposes, under chapter 18 of the Consolidated Statutes for Lower Canada.

It proceeds to describe the territorial limits of the parishes.

The 2nd section is to the same effect as the same section of chapter 29 of the statutes of the preceding session previously reported on by the undersigned.

The 3rd section provides that each parish so recognized, is so subject to the provisions set forth in the decree of erection which respects the same.

The 4th section provides that every parish which the ecclesiastical authority may erect for religious purposes, within the limits of the parishes of the ancient territory of Notre Dame, of Montreal, already dismembered and civilly recognized, or which are so by the 1st section of the Act, shall be a Catholic parish from and after the insertion in the Quebec *Official Gazette*, of a notice of the issue of the canonical decree which erects it, and that as fully and with the same effects as if it had been recognized and ratified for all civil purposes under chapter 18 of the Consolidated Statutes of Lower Canada, subject to the provisions of section 2 of the Act, and the provisions in the decree of erection with respects the same.

The decree of erection contemplated, appears to be that of the Roman Catholic bishop of the diocese, and, but for the clause under consideration no such decree would be effective unless based on the petition of the majority of the inhabitants, being freeholders, and subsequently ratified by the civil commissioners, after opportunity given to object.

It is, perhaps, not easy to determine how far the local legislature can delegate its powers. The unbroken chain of precedent since confederation establishes for the present purpose, conclusively, a right to delegate extensive powers to municipal bodies.

But it is to be remarked, that the power of legislation upon the subject of municipal institutions is especially given under the "British North America Act" to the local legislatures, and such institutions have been, from the earliest days, invested with large powers, obviously a delegation to them stands on special grounds.

It may be questioned, how far there is an authority to delegate these powers to other than those which are in their nature municipal, or at any rate, representative bodies; and there may also arise, in the case of the delegate in this instance, the question upon the Imperial Statute 14 Geo. III., chapter 83, incorporating the Statute of the 1st of Elizabeth, suggested, but not settled, by the Judicial Committee of the Privy Council in a recent case.

The erection of parishes has heretofore been accomplished, either under the Consolidated Statutes, by the action already referred to, under which the rights of the inhabitants are carefully guarded, or, in special cases, where it appeared to the legislature that there were sufficient reasons for not requiring the procedure authorized by the statute, decrees already made, and of whose propriety the legislature was in a position to judge, have been ratified by special legislation, presumably, after hearing, and with the consent of the parties affected; but the clause in question ratifies in advance, without the safeguards provided by the Consolidated Statute, any decrees which may be made for the indicated purpose by the local ecclesiastical authority.

It seems to the undersigned, that it would avoid the question to which he has referred, and would be more in accordance with the true principles of legislation, that these cases should be dealt with, as heretofore, when they arise, and he suggests that the attention of the Lieutenant-Governor should be called to his observations on this section.

Section 5 enacts that meetings for the election of churchwardens, for the rendering of accounts, and for all the matters which require the convening of a parochial meeting, in such parishes, shall be composed of the old and new churchwardens, and of persons elected in conformity with the ordinance of the Bishop, to constitute the board or body of the *fabrique*: provided that, in any case the churchwardens so elected, or the *fabrique* so constituted, shall not have power to oblige or bind the parishioners to the



payment of debts contracted by the said churchwardens or the said *fabriques*, without the previous consent of the said parishioners, declared at a general meeting of the parish duly conveyed after eight days' notice.

This section alters the mode of dealing with the temporalities of the church in these parishes, creating a variation from the general system throughout Quebec.

To the difficulties which may arise from such legislation the undersigned has referred in his report, upon chapter 29 of the Acts of the preceding session, to which he suggests the attention of the Lieutenant-Governor should be called, as applicable to this provision.

The inconvenience may be aggravated here by the fact that the special provision is applied, not merely to known and existing parishes, but to new parishes which may thereafter be created under a canonical decree, and that the mode of procedure, &c., is not known or ascertained, but is to be such as the ordinance, made in each case, may provide.

Chapter 35. "An Act to amend an Act of this Province, 38 Victoria, chapter 29."

This Act recites a certain provision of the Act which it amends, relating to meetings of churchwardens, &c., and the desirability of applying such provisions to all other parishes detached from, or which may hereafter be detached from, the old parish of Notre Dame de Montreal, which are or may hereafter be formed, either in whole or in part, out of the territory of the said parish of Notre Dame de Montreal, so that the mode of holding the said meetings be uniform throughout such parishes; and enacts that these provisions shall apply to all parishes, which are or may hereafter be formed out of the territory of the old parish of Notre Dame de Montreal, and are recognized as being lawfully binding therein, provided that in any case the churchwardens so elected, or the *fabriques* so constituted, shall not oblige or bind the parishioners to pay debts contracted by the said churchwardens, or the said *fabrique*, without the previous consent of the parishioners, declared at a general parish meeting duly called by a notice of at least eight days.

With reference to these provisions the undersigned refers to the observations made in his report upon the Act, amended by that in question, and to those made in his report herewith upon the Act, chapter 36 of the statutes of the same session, and he recommends that the attention of the Lieutenant-Governor should be directed to the observations and suggestions made in the reports, in so far they are applicable to this Act.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General on the 21st November, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th November, 1876.

With reference to chapter 60 of the Acts passed by the legislature of the province of Quebec, 39 Victoria, 1875, the undersigned begs to observe that in his report, dated 22nd September, 1876, in which this Act, among others, was reported upon, he inadvertently omitted to call attention to the use of the word "Canada" in the name of the company incorporated, namely, "The Patriotic Insurance Company of Canada."

In a report of the undersigned, dated 16th November, 1875, upon the several Acts of the legislature of the province of Ontario, the undersigned commented upon the use of the word "Canada" in the name of "The Canada Fire and Marine Insurance Company," incorporated by chapter 67 of the Statutes of Ontario, 1874, pointing out that this was of itself indicative of more than provincial powers, and it appears to him that the word should be applied only to companies incorporated by the Dominion; and by a report of the undersigned, dated 23rd December, 1875, with reference, among others, to an Act amending the Act, chapter 67, above referred to, the undersigned mentioned that the Attorney General of Ontario was prepared to promote further legislation, with a view to substitute some other word for the word "Canada" in the title of the company incor-

porated, and by the Act, chapter 91, of the Statutes of Ontario, 39 Victoria, 1876, the name of the company was changed from "The Canadian Fire and Marine Insurance Company," to the "Hamilton Fire and Marine Insurance Company."

The undersigned recommends that the attention of the Lieutenant-Governor of the province of Quebec be called to the use of the word "Canada" in the name of the company incorporated by chapter 60, above mentioned, in order that his government may consider the propriety of proposing the necessary amendments, with a view to substituting some other word therefor, before the period arrives for determining as to whether or not the Act should be disallowed.

EDWARD BLAKE,  
*Minister of Justice.*

*The Administrator of the Government of Quebec to the Secretary of State for Canada.*

GOVERNMENT HOUSE, QUEBEC, 27th November, 1876.

SIR,—The government of the province of Quebec is prepared to submit to the legislature, a bill to amend the provincial Act, 39 Vic., chap. 60, referred to in the order of the Honourable the Privy Council, of the 21st November instant.

Nevertheless, inasmuch as the Act in question relates to a company who obtained their incorporation by means of a private bill, and who might suffer serious inconvenience through the change of name, I would respectfully represent to his Excellency, that it would be only right that the provincial government should advise this company of the proposed amendment, in order that the directors may suggest another name agreeable to them, or themselves petition the Honourable the Privy Council, for the retention of the title of their company.

The desired amendment will be brought forward during this session of the Quebec legislature, unless an order to the contrary issues from the Honourable the Privy Council.

I have, &c.,

A. A. DORION,  
*Administrator.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st December, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th November, 1876.

Upon the despatch of the administrator of the province of Quebec of the 27th November instant, referring to the Order in Council of the 21st November, 1876, passed upon the report of the undersigned, with reference to the use of the word "Canada" in the name of the "Patriotic Insurance Company of Canada," incorporated by chap. 60 of the Quebec Acts, 39 Vic., 1875, the undersigned observes that the administrator states that the government of Quebec is disposed to submit a bill to amend this Act, but adds that, having regard to the fact that the question relates to a company, whose incorporation has been obtained by means of a private bill, and that the provincial government should warn the company of the proposed amendment, in order to permit the directors to suggest another name which might suit them, or to petition the Privy Council to be allowed to retain their present title.

The administrator adds that the desired amendment will be proposed during the present session of the legislature, unless there be an opposite order of the Privy Council.

The course proposed by the administrator with reference to the provincial action appears to be reasonable, but the undersigned thinks it right to point out for his

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information that the Privy Council having, in the case of a company incorporated in another province, taken such steps as resulted in the alteration by provincial legislation, of a similar title, it would seem impossible for the council to take a different course upon this occasion.

The natural anxiety entertained by the undersigned to render as little inconvenient as possible the operation of the decisions of council on these subjects, leads him to refer, for the information of the administrator, to the course taken in an analogous case.

The legislature of Ontario, by 38 Vic., chap. 67, 1874, incorporated the "Canada Fire and Marine Insurance Company." The powers given to the company were considered too extensive, and the Act was, on that ground, objected to by council.

The name was also objected to on the ground taken in the present case. In consequence of this objection, the provincial legislature, by 39th Vic., chap. 91, 1875, provided, that on and after the 31st July, 1876, if the Company should continue to do business under the authority of the local legislature, its name should be changed to the "Hamilton Fire and Marine Insurance Company." Meantime, those interested in the company applied in the usual way to the Parliament of Canada for relief, and by 39th Vic., chap. 51, 1876 (that of Canada), the shareholders in that company were incorporated as a new company, with extended powers, and under the original name. It will be for the shareholders of the Patriotic Company to consider whether they will follow the course pursued by the company just referred to.

The undersigned recommends that a copy of this minute, if approved, be transmitted for the information of the administrator of the province of Quebec.

EDWARD BLAKE,  
*Minister of Justice.*



## QUEBEC—40TH VICTORIA, 1876.

### 2ND SESSION—3RD LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th November, 1877.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th November, 1877,

With reference to the Acts passed by the legislature of the province of Quebec in the session held in the fortieth year of Her Majesty's reign, being the second session of the third parliament of that province, I beg to report that, after a careful examination, I am of opinion that they are all unobjectionable.

R. LAFLAMME,  
*Minister of Justice.*

## QUEBEC—41ST VICTORIA, 1878.

### 3RD SESSION—3RD LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd March, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th March, 1879.

I have the honour to report upon the following Acts passed by the legislature held in the 41st year (1878) of Her Majesty's reign, namely:—

Cap. 1.—“An Act respecting the Consolidated Railway Fund of the Province” (40 Vic., cap. 2).

Cap. 2.—“An Act to further amend the law respecting Subsidies in Money made to certain Railway Companies.” These two Acts appear to be within the competence of the local legislature to pass.

Cap. 3.—“An Act to amend and consolidate the Quebec License Act and its Amendments.”

This Act makes very extensive provisions respecting licenses, and may in some respects entrench upon the exclusive legislative authority of the Parliament of Canada, most of the provisions, however, are clearly within the powers of a provincial legislature, and it is by no means clear that all the provisions are not within those powers,

no interference with the Dominion interests will be likely to take place by the Act being left to its operation, and as those who are taxed or attempted to be taxed under any of its clauses which may be considered *ultra vires*, will have the privilege of disputing before the courts, the constitutionality of the provisions, I recommended that the Act be left to its operation. I recommend, however, that the Quebec government be informed, that in leaving the Act in operation, no admission is made on the part of this government, that all its provisions are in the powers of the provincial legislature.

Cap. 26.—“An Act to define and regulate the limits of certain municipalities and parishes in the counties of Nicolet, Arthabaska and Drummond, and to include in the county of Nicolet, the portions of these municipalities and parishes which are now included therein.”

The objects of this Act sufficiently appear from the title, and, with the exception of section 11, the Act requires no special mention. I think it proper to refer to that section, not for the purpose of recommending any change therein, as the section is harmless, but because I think it objectionable to attempt to deal in provincial legislation, with the rights of voters at federal elections. The section is as follows :—

“If, at the time of any federal or local election, the said municipality or portions of municipalities shall vote for such election at the places where they would have had the right to vote if this Act had not been passed.” From the way in which the section is worded, no inconvenience is likely to arise by reason of the reference to federal elections, but it would, I think, be better that in future no reference to federal elections should be made in any Act which deals with provincial electoral districts or the rights, of voters at local or provincial elections. Such legislation would have no effect upon federal elections, except in so far as the Dominion Statutes might provide, yet it might cause misunderstanding and trouble. I recommend that the attention of the Quebec government be called to these remarks.

The remaining Acts (chapters 4 to 25, and 27 to 61, inclusive) should be left to their operation.

I concur,

JAS. McDONALD.  
*Minister of Justice.*

Z. A. LASH,  
*Deputy Minister of Justice.*

## QUEBEC, 41-42 VICTORIA, 1878.

1ST SESSION—4TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd July, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th July, 1879.

I have the honour to report that, having examined the fifteen Acts passed by the legislature of the province of Quebec, in the year 41-42 Victoria (first session of the fourth legislature) and chaptered 1 to 15, inclusive, I see no reason why the power of disallowance should be exercised in respect of any such Acts: I therefore recommend that they be left to their operation.

I concur,

G. BABY,  
*Acting Minister of Justice.*

Z. A. LASH,  
*Deputy Minister of Justice.*

## QUEBEC, 42-43 VICTORIA, 1879.

## 2ND SESSION—4TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th November, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th November, 1880.

I have the honour to report upon the Acts passed by the legislature of the province of Quebec, in the second session of the Fourth Parliament (1879) as follows:—

Cap. 58.—“An Act to consolidate and amend the Act incorporating the town of St. Henri.”

I recommend that the power of disallowance be not exercised with respect to this Act, but it seems proper to remark that some of the provisions of section 15, especially subsections 7 and 8 appear to entrench upon the regulation of trade and commerce, legislative authority over which is vested in the Dominion Parliament. Inasmuch, however, as it will be competent for any person objecting to a tax imposed under authority of this statute, to raise the question in some court of law, and as the general subject is now before the Supreme Court for decision in the case of *Jonas vs. Gilbert*, (*Sup. Court Reports, Vol. V, p. 356*), it would not be proper to recommend the disallowance of the Act.

I recommend that the attention of the Lieutenant-Governor be called to these remarks.

Cap. 60.—“An Act to amend the Act incorporating the city of Sherbrooke, 39 Vic., cap. 50.”

I recommend that the power of disallowance be not exercised with respect to this Act, but that the attention of the Lieutenant-Governor be called to the provisions of section 9, which seems to entrench upon the subject of interest, which by the “British North America Act,” 1867, is placed within the exclusive legislative control of the Parliament of Canada.

I recommend that the power of disallowance be not exercised with respect to the remaining Acts. (Chapters 1 to 57, 59, and 61 to 87, inclusive.)

JAS. McDONALD,  
*Minister of Justice.*



QUEBEC, 43-44 VICTORIA, 1880.

3RD SESSION—4TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 3rd September, 1881.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th August, 1881.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report :—

With respect to the Acts passed by the legislature of the province of Quebec in the year 1880, being chapters one to one hundred and five inclusive, the undersigned has the honour to recommend that the power of disallowance be not exercised with regard to any of such Acts.

Humbly submitted,

A. CAMPBELL,  
*Minister of Justice.*

QUEBEC, 44-45 VICTORIA, 1881.

4TH SESSION—4TH LEGISLATURE.

*CERTIFIED COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 22nd July, 1882.*

On a report dated 11th July, 1882, from the Minister of Justice, recommending, with respect to the Acts passed by the legislature of the province of Quebec in the year 1881, being chapters 1 to 93, inclusive, that the power of disallowance be not exercised with regard to any of the said Acts, but as regards chapters 46, 69 and 72 the Minister has deemed it expedient to make a separate report.

JOHN J. MCGEE.  
*Clerk, Privy Council.*

*Petition of Montreal School of Medicine and Surgery to the Governor General*

*To His Excellency the Right Honourable the Marquis of Lorne, K.T., G.C.M.G., P.C., Governor General of the Dominion of Canada, in Council assembled :*

The humble petition of the Montreal School of Medicine and Surgery, a body politic duly incorporated by the legislature of the late province of Canada, having its seat in the city of Montreal—

Respectfully sheweth :

(1.) Your petitioners have been duly incorporated in 1845, by the legislature of the late province of Canada (8 Vic., chap. 81), for the purpose of giving public lectures and instruction in the various branches of the sciences of medicine and surgery; and they have, ever since 1845, kept such a medical school in Montreal. Said medical school has under its medical control the large hospital of l'Hotel Dieu, the lying-in-hospital of the Sisters of Mercy, and various other public establishments and dispensaries. It has instructed over 700 physicians, who have been duly licensed, and who practise or have practised medicine in the different provinces of Canada, and in the United States.

Your petitioners possess a large building, with a library and anatomical museum, and their lectures are followed every year by 120 to 150 students.

The said school has been affiliated, since 1869, to the Victoria University of Cobourg. Their pupils receive their degrees.

Their diplomas have always entitled the bearer thereof to a license from the General Board of Physicians of the province of Quebec to practise medicine in the said province.

(2.) The Laval University has been created by a royal charter of Her Majesty Queen Victoria, dated 8th December, 16 Victoria (1822), which authorized Le Séminaire de Québec, to wit : a classical seminary, established and existing in the city of Quebec, for the education and instruction of youth, to confer degrees and grant to said corporations all the other privileges usually granted to and enjoyed by universities, in addition to the powers and privileges hitherto possessed and enjoyed by said seminary. It also enacts that in each and every act or deed done and performed under and by virtue of said chapter, the said *Séminaire de Québec* shall be named, called and known as the *Université Laval* (Laval University).

The said royal charter further ordains, declares and grants that the rector (to wit, the superior of the said seminary) and the professors of said university, and all persons who shall be duly matriculated into and admitted as members of said university, and their successors forever, shall be one distinct and separate body politic, in deed and in name, by the name and style of "The Rector and Members of l'Université Laval (Laval University), at Quebec, in the province of Canada;" and further, that the council of said university shall consist and be composed of the rector, of the directors of said *Séminaire de Québec*, and of the three senior professors of the several faculties, Divinity, Law, Medicine and Arts, in said university; that said Université Laval shall have, possess and enjoy all such and the like privileges as were then enjoyed by the universities of the United Kingdom of Great Britain and Ireland, so far as the same are capable of being had, possessed or enjoyed under and by virtue of said royal charter; and further, that the university council, as constituted by said royal charter, shall, for the purposes of said royal charter, have, possess and enjoy the right and power to affiliate to and connect with said university, any one or more college or colleges, seminary or seminaries, public institution or institutions of education, within the said province of Canada, as to the said council may seem fit.

(3.) The said *Séminaire de Québec* has existed over two hundred years in the city of Quebec as a classical college and a seminary for Roman Catholic students in theology; and since its erection into a university, under the name of *Université Laval*, as aforesaid up to the present time, it has also confined its sphere of action as a teaching institution, and as a university, to the city of Quebec, where said seminary and

said university are located by their charters, and where all their buildings are erected and situated.

(4.) In the year 1878 the said Université Laval opened in the city of Montreal a branch of their faculties of Medicine and of Law, under the name of *Université Laval a Montreal*, not distinct faculties from those existing and teaching in the city of Quebec and affiliated to Laval University, but divisions of the same faculties which exist in the city of Quebec, the professors of which are appointed by the University Council, and may themselves become members of said University Council by order of seniority, as those of the same faculties teaching in Quebec.

(5.) The said branch of the faculties of Law and Medicine being so established in the city of Montreal, the rector of said Université Laval and the secretaries of said branch faculties did, every year since 1879, up to the present time, advertise the opening of courses of lectures in Law and Medicine to be given in the city of Montreal by Laval University, and said Laval University did, in fact, every year since 1879, give lectures in, and teach law and medicine in the city of Montreal to a large number of students, and did deliver certificates and diplomas and confer university titles and degrees to the students following the lectures so given by it in the said city of Montreal, although it had no power to do so by law, or its charter, thereby assuming and exercising powers, franchises and privileges in excess, and in direct violation of law, and of its charter.

(6.) The avowed purpose of this illegal teaching in the city of Montreal by the said Université Laval was to destroy and supplant your petitioners, as a teaching school in Montreal, and to prevent your petitioners and the French population of the Montreal district from obtaining a charter for an independent university in Montreal, where your petitioners are the only French medical school, and where there is no French teaching of the law, although three-fourths, nearly, of the French law students, are residing in the city of Montreal.

(7.) Your petitioners suffering from the intrigues of Laval University to supplant them in Montreal, of the unfair competition which they met from it as a teaching school, and of the disloyal opposition of Laval University to the efforts of your petitioners, and of the almost unanimity of the French population of the Montreal section of the province to obtain a French university in Montreal, did, on the 29th September, 1879, apply to Her Majesty's Secretary of State for the Colonies, for an authoritative interpretation of the said charter in reference to the legality of said branch faculties.

(8.) On the 3rd day of October, 1879, the Under Secretary of State for the colonies replied, by direction of the Secretary of State, that such a question was a matter of law, upon which the Secretary of State would decline to express an authoritative opinion under any circumstances.

(9.) Your petitioners, who already had had the opinion of eminent advocates of this province, adverse to such legality, then obtained the legal opinion of Sir Farrar Herschell, Solicitor General, dated 20th July, 1880, in which he holds that the Laval University at Quebec is not entitled under its charter to establish itself elsewhere than in Quebec, or to establish faculties of Theology, Law, Medicine and Arts to exist at the same time at Quebec and Montreal; he thinks that the charter by which it is incorporated, establishes it at Quebec, and it acts in excess of the powers and privileges conferred upon it by the said charter when it establishes itself elsewhere, and that the Laval University, when exceeding the powers conferred upon it by its charter, would fall within the scope of article 997 of the Code of Civil Procedure of Lower Canada. Various considerations point to these conclusions, which are given at length in said opinion.

(10.) Thereupon your petitioners did, on the 4th October, 1880, protest, by their notary, the Laval University to cease teaching Law and Medicine in Montreal, and to abolish their said branch faculties in the last named city, as otherwise proceedings at law would be instituted against it on that account.

(11.) Alarmed at these threats of legal proceedings against it, and at the said opinion of so high an authority on the interpretation of a royal charter, the Laval



University did, on the 4th November, 1880, petition Her Majesty, through his Lordship the Roman Catholic Archbishop of Quebec, by law the visitor of said university, and the bishops of the said province, to be pleased to add to the powers already defined in the royal charter of 1852, such clause as Her Majesty might think fit, to dispel all doubts raised, as to the legality of said branch faculties in Montreal.

(12.) In a letter from the Under Secretary of State for the Colonies, written by order of the Earl of Kimberley, dated 20th January, 1881, and addressed to Messrs. Bircham & Co., petitioners' agents in London, after stating that his Lordship had received from the Governor General of Canada said petition to the Queen by the Roman Catholic Archbishop and bishops of the province of Quebec, with regard to the powers of the university, and also a draft of a proposed new charter for that institution; and, further, a letter from the officers of the School of Medicine and Surgery at Montreal, to the effect that they had, by their notary, summoned the Laval University to cease giving university instructions at Montreal, and to abolish the branch house and the professorships which it has therein established, and have warned the university that in default of its not conforming itself to the summonses within thirty days from the 4th October last, they would appeal to competent tribunals to obtain justice; the Under Secretary adds that the Secretary of State has informed the Governor General of Canada, that it does not appear to him necessary to decide the question at present, as he does not think it right to invite Her Majesty to interpose, while the question as to the powers of Laval University, is about to be decided in a court of law.

The meaning of these last words is made clearer by a communication from T. Bircham, Esq., petitioners' agent in London, to Dr. D. d'Orsonnens, president of the said Montreal School of Medicine and Surgery, dated 2nd May, 1881, in which he communicated to the said president an information which he had just received from the Colonial Office, to the effect that the Secretary of State, before tendering any advice to Her Majesty on the subject, proposes to await the result of the legal proceedings which, he was informed, have been instituted in the provincial courts of Quebec, on the question in dispute between the School of Medicine and the Laval University. Under such circumstances, Lord Kimberley considered that, at that stage, no advantage would be gained by complying with Mr. Bircham's request for a copy of the new charter.

(13.) After a second notarial protest made on the 23rd March last past (1881) your petitioners did, in the beginning of April last past (1881), petition the Honourable the Attorney General of the province of Quebec, for leave to use his name in proceedings, in the nature of a prohibition, to be instituted against the said L'Université Laval, on account of the said illegal teaching in the said city of Montreal, as provided by article 997 of the Code of Civil Procedure of Lower Canada, and its amendments.

After hearing your petitioners, and L'Université Laval, by their counsel, the Attorney General granted the prayer of the said petition, on certain conditions of security, for costs, which have been complied with.

(14.) On the 14th day of April last past, a petition was presented to a judge of the superior court, sitting in chambers in Montreal, under articles 997 and 998 of said Code of Procedure, in the name of the Honourable L. Onésime Loranger, Attorney General for the province of Quebec, *pro Regina*, praying for the issuing of a writ of summons to order l'Université Laval to appear and answer said petition, and show under what authority it has established said branch faculties of Law and Medicine in the city of Montreal, given lectures therein and conferred certificates, diplomas and university degrees and titles to the students of said branch faculties, and on default of cause being shown to the satisfaction of the court or judge thereof, that it be declared by said court or judge, that by reason of the facts above set forth, l'Université Laval (Laval University) at Quebec, in the province of Canada, have illegally and unlawfully assumed and exercised powers, privileges and franchises, unauthorized by law and by their said charter, that an order do issue to the defendants to abolish said branch faculties, and to discontinue said teaching in Montreal, and to cease issuing diplomas, certificates and conferring university degrees and titles to the students in the said branch faculties.

(15.) The said petition and writ were duly returned into court on the day fixed for that purpose; the defendants have appeared and filed a preliminary plea by way of declinatory exception, by which it is alleged that the defendants, being located and having their principal establishment and seat in the city of Quebec, they could not be impleaded in the district of Montreal, but in the district of Quebec only.

This preliminary plea has not been disposed of as yet, on account of the steps which were immediately taken by the authorities of the Laval University to obtain from the Quebec legislature the bill hereafter mentioned, by which it was expected to enlarge the powers conferred on it, by its royal charter and to legalize said branch faculties so questioned in courts of law.

(16.) Notices were then immediately given on behalf of said university, in the Quebec *Official Gazette* and in two newspapers, one French and one English, published in the city of Quebec, but nowhere else, that there would be presented to the legislature of the province of Quebec, at its next session, a Bill concerning the Laval University and the multiplication of its chairs of instruction in the Arts and other faculties.

(17.) It was on such notices that the Bill No. 15, intituled: "An Act respecting Laval University, and for the purpose of increasing the number of its chairs of Arts and other faculties within the limits of the province of Quebec," was presented, which, in its original form reads as follows:—

"Whereas certain persons have raised doubts with reference to the right of Laval University to give a university course elsewhere than in Quebec; and whereas it is expedient to remove such doubts:

"Therefore Her Majesty, by and with the advice and consent of the legislature of the province of Quebec, enacts as follows:—

"(1.) Laval University is empowered to increase the number of its chairs of Arts and other faculties within the limits of the province of Quebec.

"(2.) The present Act shall come into force on the day of its sanction."

(18.) Your petitioners and an immense number of citizens, opposed said Bill before both houses of the legislature, and over 340 petitions of clergymen and laymen of all classes, mostly from that section of the province of Quebec, included south of the diocese of Quebec, were presented to both houses of parliament and to his honour the Lieutenant-Governor of the said province, while only four petitions were presented in its favour which were chiefly from persons connected with said university.

(19.) But said bill was adopted by both houses of parliament, with amendments that made it yet more objectionable than in its original form, to wit: by providing in a new section (2) that said bill would not apply to pending cases as to damages and costs only. It received the assent of the Lieutenant-Governor under the above title.

20. It passed through both houses in direct violation of their rules namely:—

(a) No notice of said bill was given in the district of Montreal, which, in fact is the one mostly affected by it.

(b.) The bill goes further than the notices, in this, that it includes the words "within the limits of the province of Quebec," which words change the nature and extent of the bill altogether.

(c.) It was presented, and passed the first and second reading in the legislative council, without any petition having ever been presented in support of it.

(d.) It was never reported by the committee of the standing orders of said council that the notices had or had not been given.

(e.) The rules of the legislative council were never suspended, so as to dispense with the notices of the report of the standing orders committee about the notices.

(f.) The three readings of said bill in the legislative council were altogether irregular, and only passed after a formal protest was regularly entered into journals of the council against the violation by the majority of the council, of the rules made for the protection of the minority thereof, and of private rights.

(21.) The total disregard of these safeguards of public and private interests, and the passing of said bill, were only had through a considerable pressure unduly exercised upon the consciences of the Catholic members of both houses of parliament, namely, by



private and public letters of his lordship the Roman Catholic Archbishop of Quebec, and some of the bishops of said province, who invoked the authority and the name of the Catholic dignitaries at Rome in favour of the said bill, whilst your petitioners have reason to believe that the said dignitaries had carefully refrained to interfere in a question then, and yet, pending before the courts, and out of respect to Her Majesty, who, by her ministers, has peremptorily declined to entertain, pending said litigation, the demand of new powers which the local legislature of Quebec had presumed to grant to Laval University in excess of her royal charter.

(22.) Your petitioners most respectfully beg leave to submit to your Excellency the following documents annexed to this petition as forming part thereof:—

(a.) A printed copy of "*Constitution et réglemens de l'Université Laval; 4th Edition, 1879*," containing the text of the said royal charter, of a Bull of His Holiness Pope Pius IX., granting the canonical erection of Laval as a Catholic University, and the rules and regulations of said university.

(b.) A printed pamphlet intituled: "*Questions sur la succursale de l'Université Laval, 1881*," containing a pamphlet in favour of the bill, divers letters from Rome authorities, from the Archbishop of Quebec, of Marianopolis, &c., &c. Petitions to the Queen and to Quebec legislature by the Archbishop of Quebec and a number of bishops, in reference to said question of the branch faculties in Montreal.

(c.) Printed return to an address of the Senate of Canada for copies of correspondence, petitions, etc., relating to Laval University of Quebec, 1881, containing, among other documents, the letters of Hon. J. Bramston, Under-Secretary of State for the Colonies above referred to.

(d.) A pamphlet printed by order of the Quebec legislature containing the proceedings of the Private Bills Committee on said Bill No. 15, and the documents filed before it, 1881.

(e.) A printed copy of said Bill No. 15 as originally presented.

(f.) A French printed copy of the Bill No. 15, as amended and finally adopted.

(g.) A printed pamphlet issued by your petitioners, and containing information about it, and the rules and regulations of the Montreal School of Medicine and Surgery, 1880.

(h.) Copy of the opinion of Mr. F. Herschell.

(i.) Copy of a notarial protest by your petitioners to Laval University, dated 4th October, 1880.

(j.) Copy of a second notarial protest dated 23rd March, 1881.

(k.) A series of the votes and proceeding of the legislative assembly of Quebec, 1881, mentioning petitions for and against said Bill No. 15; those of the 8th and 13th June, 1881, containing the proceeding of the House on said Bill No. 15.

(l.) A series of the votes and proceedings of the legislative council mentioning petitions against and for said Bill No. 15; that of the 15th June showing, further that said bill was brought with a message from the legislative assembly, and that said bill was read on that day for the first time, and the second reading was ordered for Friday the 17th June; that of the 17th June showing that the said bill was read for the second time on that day, and referred to the Private Bills Committee; that the petition by "the rector and members of the Laval University," in support of said bill, was only presented on that day; that of the 21st June containing a report of the Standing Orders and Private Bills Committee on said last petition, recommending that said petition be reported, notwithstanding that it was not presented within the time limited for the reception of petitions for Private Bills, which report was adopted on a division, and further containing a report from said committee, that it reported said bill without amendment. That of the 22nd June, containing the proceedings of the legislative council on the said last report, the third reading of the Bill No. 15, and a protest from Hon. J. L. Beaudry, a member of that body.

(m.) A printed copy of your petitioners' petition and demand of prohibition against said Laval University, in the superior court, sitting at Montreal, together with the Hon. L. Loranger's fiat and Judge Rainville's order.



(n.) Copy of the preliminary plea of Laval University to said petition, and your petitioners' answer thereto, and certificate.

(o.) A letter from S. Bircham to Dr. d'Orsonnens, dated 2nd May, 1881.

(p.) A list of petitions against said Bill No. 15.

Your petitioners most respectfully and humbly submit :—

*Firstly.* That the said Act is *ultra vires* of the Quebec legislature and unconstitutional, inasmuch as it purports to extend the powers, privileges and franchises granted to Laval University by said royal charter in a manner which relates to the royal prerogative of conferring honorary degrees and titles, namely, in assuming to extend the teaching power of Laval University to every city and town in the province of Quebec, whilst Her Majesty only intended to confer, and only did confer the powers, franchises and privileges of a university to a seminary, located and teaching in the city of Quebec, and to "Laval University at Quebec, in the province of Canada."

*Secondly.* That the passing of said Act by the Quebec legislature, for the purposes of settling a pending lawsuit, by legislation, is immoral and destructive of the respect due to the law courts, and to the legislature of the country.

*Thirdly.* That the passing of said Act by the Quebec legislature, for the purpose of granting to Laval University the power of teaching elsewhere than in the city of Quebec, to which place it is restricted by its royal charter, while a demand of the same nature has been made by the said Laval University directly to, and is yet pending before, Her Majesty, who has only declined to interpose and entertain said demand, so long as the question of the powers of said university are submitted to the decision of the courts of law, but graciously keeping said demands in abeyance for future consideration, after a final adjudication by the courts upon said question, is most disrespectful to Her Most Gracious Majesty and to Her Government, and tends to discredit and abuse the dignity of Her royal power and authority.

*Fourthly.* That your petitioners have been unfairly treated by said Laval University, who, in its desire to supplant and destroy the medical school kept by them in Montreal since 1845, has made to it a most unfair competition, and caused a most disloyal war against it in every way and form.

*Fifthly.* That the Quebec legislature has disregarded all principles of justice in passing said bill, and violated all its rules and regulations to such an extent, that unless such course of proceedings be checked at once, there will be no protection either to private rights, or to public interest.

*Sixthly.* That the object of the said bill is to create a monopoly of high classical and university teaching in the province of Quebec for the French Catholic population, thereby preventing all emulation, both among professors and students, to the great detriment of progress, of sciences, and giving to a single corporation such a powerful and omnipotent influence over the educated portion of the population of this province, as to be detrimental to the well being of said province.

*Seventhly.* That the French Catholic population of that section of the province, extending south of the archdiocese of Quebec, to wit : of three-fourths, at least, of the whole province, including the rural clergy, is opposed, almost unanimously, to the granting of such extended powers to Laval University, as evidenced by the 340 petitions, and one presented to the three branches of the Quebec legislature against the passing of said Bill.

*Eighthly.* That the legislation embodied in the said Act is contrary to sound principles of legislation, inasmuch as it is declaratory of the powers contained in the said royal charter, while the question of such powers is *sub judice*, and it declares to have been the law, that which was not the law, and legislates *ex poste facto*, is retroactive, affects pending cases and interferes with private rights ; and inasmuch as said local legislature has, without any demand, assumed to interfere with private parties engaged in litigation, and to disregard the well-being and wishes of all the population to be affected by such legislation, in order to satisfy the ambition of an already overpowerful corporation ;

Your petitioners most respectfully and humbly submit—

That an order should be made by your Excellency for the disallowance of the said Act.

And your petitioners will ever pray.

THS. E. D'ODET D'ORSONNENS, M.D., C.M., LL.D.,  
*President.*

J. EMERY CODERRE,  
*Secretary.*  
MONTREAL, 8th August, 1881.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th July, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th July, 1882.

*To His Excellency the Governor General in Council :—*

The undersigned has the honour to make the following additional report upon the Acts passed by the legislature of Quebec in the year 1881.

Chapter 46. An Act respecting Laval University, and for the purpose of increasing the numbers of its Chairs of Arts and other Faculties within the limits of the Province of Quebec.

The Montreal School of Medicine and Surgery have, by their petition to your Excellency, prayed that this Act be disallowed, and have stated a number of grounds in support of their petition. The undersigned is of opinion that the Act is within the powers expressly conferred upon the legislature by "The British North America Act," and therefore recommends that it be not disallowed.

Chapter 69. An Act to incorporate the Canadian Electric Light Company.

By section 20 of this Act *inter alia* a penalty is imposed on "any one who wilfully or maliciously breaks up, pulls down or damages, injures, puts out of order, or destroys any wire, injures pipe or plug used for an electric circuit, or any instrument, meter, lamp post, abutment, pier, or the materials connected therewith, or any other works or apparatus, appurtenances or dependencies thereof, or any matter or thing made and provided for the purposes aforesaid, or any of the materials used and provided for the same, or ordered to be erected, laid down or belonging to the company.

By 32 and 33 Vict., chap. 22, sections 59 and 60 (Acts of Parliament of Canada), the offence created by the part of the section recited is a misdemeanour, if the damage exceed \$20, or an offence punishable by fine, and in case the fine is not paid, by imprisonment.

Chapter 72. An Act to incorporate the Quebec and Lévis Telephone Company.

The same conflict of law is created by the 9th section of this Act.

The undersigned recommends that the attention of the Lieutenant-Governor of Quebec be called to those sections, with a view to their amendments at the next session of the Quebec legislature.

A. CAMPBELL,  
*Minister of Justice.*

*Confidential Memorandum of the Honourable the Minister of Justice.*

MEMORANDUM in regard to "An Act respecting Laval University, and for the purpose of increasing the number of its Chairs of Arts and other Faculties within the limits of the Province of Quebec," passed by the Legislature of the Province of Quebec in the year 1881, stating reasons for recommending that the Act be not disallowed.

The Montreal School of Medicine and Surgery have petitioned his Excellency, and prayed that the Act be disallowed. The grounds put forward are, briefly :

1st. That it is *ultra vires*, as extending the royal charter by which Laval University is incorporated.

2nd. That it is passed while the powers of Laval University are under consideration in the courts, and for the purpose of settling an existing suit. That the legislation is therefore improper, and tends to destroy public respect for the courts.

3rd. That it was passed without due compliance with the rules of the legislature of Quebec, and in violation of those rules.

4th. That the legislation is *ex post facto*.

5th. That there were only four petitions before the legislature in favour of it, and a large number against it, showing that the French Catholics are opposed to the Act.

6th. That Laval University has for years warred against the "Montreal School of Medicine and Surgery," and that, if the Act is not disallowed, the competition of the former will not only be unfair, but fatal to the latter. That at the time it was passed, the Montreal School of Medicine and Surgery had an application before Her Majesty for a charter giving similar powers.

As to the first ground, the undersigned is of opinion that the Act is within the powers expressly conferred upon the legislature by "The British North America Act," and is not *ultra vires*, even if it does extend the powers conferred upon Laval University by the royal charter.

As to the second ground, the undersigned is of opinion that it does not in this case afford a sufficient reason for recommending the disallowance of the Act, and in this connection would observe that, although the Act may extend the powers of the Laval University, it takes away none of the rights or powers of the Montreal School of Medicine and Surgery, or of any other person or body politic. It differs materially from the case of an Act affecting an ordinary suit, or matters of dispute between individuals, where what is taken from one litigant is given to the other.

As to the third ground, the undersigned is of opinion that, as the Act comes properly certified, it must be assumed that it was properly enacted—the legislature must judge for itself as to what is a sufficient compliance with the rules which it has ordained for the orderly conduct of its business.

As to the fourth objection, the undersigned would observe that it is by no means clear that the Act is retroactive in its effect, and whether it is or not, he is of opinion that this of itself does not afford sufficient reason for its disallowance.

There is nothing in the fifth, sixth or seventh grounds to justify the disallowance of this Act.

The objections were proper matters for the consideration of the legislature, but cannot, in the opinion of the undersigned, be taken into account in this case, in deciding the question as to whether the Act should be disallowed or not.

A. CAMPBELL,  
*Minister of Justice.*



## QUEBEC—45TH VICTORIA, 1882.

1ST SESSION—5TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 7th June, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th June, 1883.

*To His Excellency the Governor General in Council:—*

The undersigned has had under consideration the Acts passed by the legislature of the province of Quebec in the session of 1882.

While respectfully recommending that the said Acts (chapters 1 to 108 inclusive) be left to their operation, the undersigned desires to observe :

(1.) That in Acts authorizing municipal and other corporations to borrow money, it is convenient for local legislatures to give power to pay interest, and also to limit the rate of interest which the corporation may pay, probably no objection exists to a local legislature enacting that a corporation may pay any rate that may be legally agreed upon, or that it may pay a fixed rate within the maximum rate at the time lawfully established. In a number of Acts of this session there are provisions of this kind where the power of Parliament to legislate on the subject of interest is in this way indirectly recognized.

In other cases it is not. It is desirable in all cases that Acts of the local legislature should be so drawn as to recognize the fact that Parliament has the exclusive legislative authority over the subject of interest.

(2.) By the 1st section of chapter 4, intituled : “ An Act to facilitate the intervention of the crown in civil cases, in which the constitutionality of Federal or Provincial Acts is in question,” it is provided as follows :—

“ No question as to constitutionality of any Act of the province or of the federal parliament shall be raised before the courts of original jurisdiction or of appeal, unless the party raising the same shows to the court that he has, at least, eight days before the day fixed for the hearing, given notice to the Attorney General of the question which he intends to raise, with sufficient information to enable him to understand the nature of his pretensions ; upon such notice the Attorney General may intervene in the case on behalf of the crown, and take issue in writing on such questions, and the judgment of the court, whether it grant or refuse his conclusions, shall mention such intervention, and such conclusions on which it shall render judgment, as if the Attorney General were party to the suit, and a copy of such judgment shall be forwarded without delay to the Attorney General.

So far as this section deals with Acts of Parliament, it is, in the opinion of the undersigned, objectionable, to say nothing more, and ought to be amended by striking out the words, “ or of the federal parliament.”

(3.) Chapter 9. An Act to amend the Quebec License Law of 1878 (41 Vic., chap. 3), is, in the opinion of the undersigned, *ultra vires* of the local legislature.

Attention has been frequently called to Acts of this class, but hitherto they have been left to their operation. Now that parliament has legislated upon the subject, it will become necessary to consider the question of disallowing legislation by the local legislature on the subject in excess of their powers.

However, as the Act under consideration was passed before the decision in *Russell vs. The Queen*, it may, it is thought, together with the Act of which it is an amendment, be left to fall by the decisions of the courts, and it is not necessary to disallow it.

(4.) A petition has been received from certain insurance companies doing business at Montreal, praying for the disallowance of chap. 22, intituled: "An Act to impose certain Direct Taxes on certain Commercial Corporations."

As the question of the validity of this Act is now before the courts, it is unnecessary to consider the grounds upon which the petitioners urge that it is outside the legislative authority of the legislature, or to express any opinion in regard thereto.

It ought, in the opinion of the undersigned, for the present, to be left to its operation, and for judicial decision.

(5.) With respect to the 2nd section of chap. 35, intituled: "An Act to further amend the Municipal Code of the Province of Quebec," the undersigned is of opinion that to apply the provisions of the law therein quoted to federal government railways, is beyond the power of the provincial legislature. The section should be amended as to exclude government railways, the property of the Dominion.

(6.) By the 12th subsection of the 23rd section of chapter 103, intituled: "An Act to incorporate the Town of Richmond," the town council is given power to make by-laws to restrain, regulate or prohibit the sale of any spirituous, alcoholic or intoxicating liquors within the limits of the town.

The observations in regard to chapter 9 apply to this provision. If these observations are approved of, the undersigned recommends that the substance of them be communicated to the Lieutenant-Governor of Quebec, for the consideration of his government, to the end that they may invite such legislation at the next session of the Quebec legislature, as will meet the amendments suggested.

A. CAMPBELL,  
*Minister of Justice.*

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## QUEBEC—46TH VICTORIA, 1883.

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2ND SESSION—5TH LEGISLATURE.

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 29th June, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd June, 1884.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report on the Acts of the legislature of Quebec, passed in the session held in the year 1883.

Chapter 13, intituled : "An Act to amend the law respecting the constitution of the Superior Court," assigns an additional judge to the district of Quebec, and provides that the judge to whom it is assigned in the county of Gaspé, shall also exercise his functions in the county of Bonaventure. Resolutions were passed by twelve municipalities of the county of Gaspé asking that this Act be disallowed, and were transmitted to this department by Dr. Fortin.

To these resolutions the undersigned replied that, after careful consideration of the subject, he could not see his way to advising his Excellency to disallow the Act, that the subject of the Act was one particularly and exclusively assigned to the provincial legislature by the constitution, and the Act was within the competency of that legislature.

Parliament has made provision for the payment of judges in accordance with this Act, which in the opinion of the undersigned, should be left to its operation.

Chapter 55, intituled : "An Act to confirm the Act of the Federal Parliament, 45 Vic., chap. 101, intituled : 'An Act to amend and extend the Act to empower the Stadacona Fire and Life Insurance Company to relinquish their charter and to provide for the winding up of their affairs,' and to render valid the provisions of the said Act and to give effect thereto."

This Act is passed apparently because doubts have arisen as to the authority of Parliament to make provision that, in the winding up of the companies mentioned, proceedings for the recovery of claims must be taken within one year, Parliament having the authority to legislate in regard to the winding up of the company, on account of its insolvency would, it is thought, have power to enact the provisions mentioned.

At most, however, the Act is only an unnecessary one, and, as it affects no general interests, and was passed for the quieting of doubts, the undersigned, while stating that he does not share those doubts, recommends that it be left to its operation.

Chapter 76, intituled : "An Act to incorporate the Citizens Gas Company of Montreal." By section 25 a penalty is imposed for the offence of obtaining or using the company's gas without their consent by connecting with their pipes. This has been held to be larceny. *Regina vs. Firth*—L.R. 1, C.C.R. 172.

By sections 26 and 29, penalties are imposed for wilful and malicious injuries to the property of the company for which provision is made by the Act of Parliament 32 and 33 Vic., chap. 22, intituled : An Act respecting malicious injuries to property.

The undersigned recommends that this Act be left to its operation, and that the attention of the Lieutenant-Governor of Quebec be called to the provisions of sections 25, 26 and 29, with a view to their being amended in the direction indicated.

After careful consideration the undersigned recommends that the remaining Acts of the session (chapters 1 to 12, 14 to 54, 56 to 75, 77 to 101, inclusive) be left to their operation.

A. CAMPBELL,  
*Minister of Justice.*



QUEBEC, 47TH VICTORIA, 1884.

3RD SESSION—5TH PARLIAMENT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th July, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th June, 1885.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Acts passed by the legislature of the province of Quebec, in the session held in the year 1884, has the honour to recommend that the Acts (chapters 1 to 76, 78 to 86, 88, 89, and 91 to 97 inclusive) be left to their operation.

Chapter 77. An Act to authorize the Government of Quebec to take possession of a certain toll-bridge over the River Richelieu.

A petition was presented on the 1st of August last by the Hon. R. Laflamme, Q.C., acting on behalf of the representatives of the late Hon. R. Jones, to whom the privilege of building the bridge and taking tolls thereon was granted by an Act of the legislature of Lower Canada, 6 Geo. IV., chap. 29, praying for the disallowance of this Act, on the ground that it is an invasion of the right and a dispossession of the property secured to Mr. Jones by a solemn contract of the legislature of Lower Canada, for the purpose of transferring the same to a municipal or private corporation, without any benefit or advantage to the public at large, and also that it deprives the petitioners of their property without providing that payment of the value thereof shall be first made, and takes away their recourse to the regular tribunals of the country.

The petition was communicated to the Lieutenant-Governor of Quebec for such observations as his government might see fit to make thereon, and on the 23rd February last his Honour transmitted a report of his Attorney General on the subject, approved by order of his executive council.

In reply to the objections urged on behalf of the petitioners, the Attorney General of Quebec refers to the sections 3 and 8, of 6 Geo. IV., chap. 29, which provide for the assumption of the bridge by the crown, after the expiration of fifty years, on payment of the value thereof, whereupon the bridge shall vest in the crown, and points out that such right of the crown is made subject to no other conditions.

With respect to the contemplated transfer by the Quebec government of the bridge to a municipal or private corporation, it is contended that the parties have no interest in objecting to such a course, which, as a matter of fact, is in the public interest, and is adopted with a view to reducing the tolls.

As regards the question of compensation, it is denied on behalf of the Quebec government that the Act provides for the taking possession of the bridge by the government, upon paying the value thereof to the owners, and it is alleged that the matter was referred to arbitration, under the law of the province governing arbitrations.

The undersigned, upon consideration of the whole matter, can see no reason for advising the disallowance of the Act. Its subject matter is one peculiarly and exclusively within the competence of the provincial legislature, and the grievance disclosed by the petition is, in the opinion of the undersigned, sufficiently met by the answer of the government of Quebec.

The Quebec government appear to have acted in the exercise of an undoubted right and in the public interest, and proceedings have been commenced for the purpose of establishing the value of the petitioner's rights, in which they have apparently acquiesced, by naming one of the arbitrators.

The undersigned humbly advises that the power of disallowance be not exercised with respect to this Act.

Chapter 87. "An Act to further amend the Act 27 Vict., chap. 23, and the Act 39 Vict., chap. 47, in order to modify and better define the general powers of the corporation of the town of Joliette, and for other purposes.

Section 15, subsections 4, 5, 6 and 7, and sections 16 and 17, are as follows :—

4. It shall be lawful for any constable, when on duty, to arrest all idle and disorderly persons whom he may find disturbing the public peace, or whom he may have good reasons to suspect of any evil design, and any person whom he may find lying in any field, road, street, yard or other places, or loitering therein, and not giving a satisfactory account of himself, to deliver such persons so arrested into the custody of the officer or constable appointed under this Act, and who shall be on duty, or in charge of the police station or guard house established for that purpose by the said council, in order that such person be kept in safe custody until he can be brought before the mayor, pro-mayor, one of the councillors of the said town, or before a justice of the peace, to be dealt with according to law.

5. In addition to the powers and authority conferred by the preceding subsections upon the said constabulary force, it shall and may be lawful for any officer or constable of the said force, by day or by night, to arrest on view any person infringing any of the by-laws of the said town of Joliette, or of the council thereof, the infringement of which is punishable, and it may and shall be lawful also for each such officer or constable to arrest every such person infringing any such by-laws, immediately, or after the offence has been committed, upon sufficient information being given to him as to the nature of the offence, and to the persons who have committed it.

6. All persons so summarily arrested may be at once conveyed to the court house of the district of Joliette, or to any other place which the council may be pleased to indicate by by-law, to stand their trial before the said mayor, pro-mayor, or justice of the peace who may be present, or in order that they may give bail or recognizance before the said mayor, pro-mayor or justice of the peace, to appear on the day fixed by the said mayor, pro-mayor or justice of the peace to answer to the charge or complaint brought against them, and for which they may have been arrested as aforesaid.

7. In every such recognizance so taken, the parties thereto shall bind themselves equally for the same amount, and it shall be subject to the same procedure as to the forfeiture thereof, before the said mayor, pro-mayor or justice of the peace, as a recognizance taken before a justice of the peace and forfeited before the Court of General Sessions of the Peace for the district of Joliette; provided that nothing herein contained shall prevent the persons so summarily arrested from being examined and tried at once when they are brought to the court-house, or other place fixed by the said council as aforesaid, before the said mayor, pro-mayor or justice of the peace, if the offence for which such persons have been arrested, can be legally brought before such mayor, pro-mayor or justice of the peace.

16. And if the party does not appear but applies, by any person in his name, to postpone the hearing of the charges against him, and if the mayor, pro-mayor or justice of the peace think proper to consent thereto, the said mayor, pro-mayor or justice of the peace shall be at liberty to continue such recognizance until a later period which he shall specify, and when the affair is heard and decided, either by the charge being dismissed, or the party being called upon to answer to the said charge later on, the recognizance for the appearance of the said party before the mayor, pro-mayor or justice of the peace, shall be cancelled.

17. If any person assaults or resists, or aids or incites another person to assault or resist an officer or constable, appointed in virtue of this Act in the execution of his duty, such delinquent shall, upon conviction before the mayor, pro-mayor or justice of

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the peace, incur and pay for each such offence, a fine not exceeding twenty dollars, or be liable to an imprisonment of not more than thirty days.

Similar provisions are made by section 56, subsection 4 and sections 65 and 66 of cap. 90, intituled: "An Act to incorporate the town of Sainte Cunégonde."

These provisions, in the opinion of the undersigned, trench upon the power of Parliament to legislate with respect to criminal law, and while recommending that the power of disallowance be not exercised in respect of these Acts, he recommends that the attention of the Lieutenant-Governor of the province be called thereto.

A. CAMPBELL,  
*Minister of Justice.*



## QUEBEC, 48th VICTORIA, 1885.

4TH SESSION—5TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 15th March, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th February, 1886.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the Acts passed by the legislature of the province of Quebec, in the session held in the year 1885.

The undersigned having carefully considered the Acts (chapters 1 to 86 inclusive), respectfully recommends that they be left to their operation.

By chapter 10, intituled : "An Act respecting Escheats and Property confiscated to the crown," it is provided that property that has devolved or shall devolve upon the crown by escheat, and property confiscated for any cause whatever, except for crime, are under the control of the Commissioner of Crown Lands ; that such property may be sold or transferred by the Lieutenant-Governor in council, upon such conditions as he may impose, or that he may dispose of the property gratuitously in favour of any person having moral claims thereto.

It will be observed that the word "property" is large enough to include personal property. But whether the crown, in the right of the Dominion of Canada, or of a province, is entitled to personal property escheating for want of kin, is a question not yet decided. For the determination of this question, a case is now pending in the exchequer court between the undersigned, for the Dominion of Canada, and the Attorney General of Ontario. (*See Atty. Genl. Ont., vs. Atty. Gen. Canada. Sup. Ct. Rep. vol. xiv, p. 736.*)

The undersigned recommends that the attention of the Lieutenant-Governor of Quebec be called to this matter, and that he be invited to move the legislature, pending the decision of the legal question involved, so to amend this Act, as to limit its application to property which escheats to the crown in the right of the province, and that he be informed, however, that it is not the intention of your Excellency's Government, pending the decision of that question, to interfere in the administration of the personal property of persons dying in the province of Quebec, leaving no next of kin or other person entitled to succeed, other than Her Majesty.

By chapter 22, intituled : "An Act to amend the Code of Civil Procedure, in so far as it concerns abandonment of Property," provision is made for the administration of the estates of insolvent persons, substantially in the same way as it was done by the Act of the legislature of the province of Ontario, 48th Vic., chap. 26, to which the undersigned has referred in his report upon the Acts passed by the legislature of that province in the year 1885. For the reasons given in that report the undersigned recommends that the power of disallowance be not exercised in respect of this Act. (*See ante, page 199.*)

Chapter 32, intituled : "An Act to protect the life and health of Persons employed in Factories," makes similar provision on this subject to those made by the Act of the legislature of the province of Ontario, 47th Vic., chap. 39, intituled : "An Act for the protection of persons employed in Factories." (*See ante, page 195.*)

Referring to the approved report of the Minister of Justice, dated 20th January, 1885, in respect of the Act last mentioned, the undersigned recommends, that this Act of the legislature of the province of Quebec, 48th Vic., chap. 32, be left to its operation.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

QUEBEC, 49-50 VICTORIA, 1886.

5TH SESSION—5TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 2nd April, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd March, 1887.

*To His Excellency the Governor General in Council :*

The undersigned begs leave to submit his report on the Acts passed by the legislature of the province of Quebec, in the session of 1886, authentic copies of which were received by the Secretary of State on the 20th of July last.

Chapter 34. By the 16th section of chapter 34, intituled: "An Act respecting the Bar of the Province of Quebec," the *batonnier* of the province is given precedence over the other members of the bar. A similar provision was contained in the 16th section of the Act of the same legislature, 44-45 Victoria, chapter 27, which was left to its operation without comment. (*See ante* page 297.) It is to be observed, however, that in *Lenoir vs. Ritchie* (3 Can., Sup. Ct. Rep., 575,) Henry, Taschereau and Gwynne, JJ., constituting a majority of the court, held that a provincial legislature has no power to authorize the Lieutenant-Governor to appoint Queen's Counsel, or to grant to any member of the bar, a patent of precedence in the courts of the province, as the prerogative of raising practitioners in the courts of justice to a superior eminence, by constituting them sergeants, &c., or by granting letters of precedence to such barristers as Her Majesty thought proper to honour with that mark of distinction, whereby they were entitled to such rank and pre-audience as were assigned to their respective patents, belonged in Canada, to your Excellency, as the representative of the crown, and not to the Lieutenant-Governors. In coming to this conclusion, it will be seen by reference to the report of the case, that the learned judges did not overlook, but took into consideration and discussed, the fact that in his despatch of 1st February, 1872, to Lord Lisgar, the Earl of Kimberley stated that he was advised that the legislature of a province, could confer by statute on its Lieutenant-Governor, the power of appointing Queen's Counsel, and with respect to precedence or pre-audience in the courts of the province, the legislature of the province had power to decide as between Queen's Counsel appointed by the Governor General and the Lieutenant-Governor. Since 1879, *Lenoir vs. Ritchie* has continued to be, and until reversed, should be accepted and respected as the authoritative enunciation of the law on the subject. It is clear, the undersigned thinks, that a legislature cannot, in this respect, exercise directly a power which it cannot enable the Lieutenant-Governor to exercise.

For these reasons the undersigned is of opinion that the section referred to should be repealed, or at least should be so amended as to show clearly that the legislature intended the enactment to be, as Sir John Macdonald, then Minister of Justice, in his report of 3rd January, 1872, states it to be, "subject to the exercise, by your Excellency, of the royal prerogative, which is paramount and in no way diminished by the terms of the Act of Confederation."

Chapter 39.—The undersigned will make chapter 39, intituled: "An Act to authorize certain Corporations and Institutions to lend and invest Moneys in this Province," the subject of a separate report.



Chapter 49.—By the 1st section of chapter 49, intituled : “An Act to amend the Act of this province, 45 Victoria, chapter 103, respecting the town of Richmond,” the town council is given the power, not only to restrain and regulate the sale of spirituous liquors, but also to prohibit such sales. Probably under the decisions, this is in excess of the powers of the legislature.

Chapter 98.—The 1st section of chapter 98, intituled : “An Act respecting the Executive Power,” declares that “The Lieutenant-Governor, or person administering the government of the province is a corporation sole.” This section is taken from the Consolidated Statutes of Canada, chapter 10, section 1, which may possibly by virtue of the 65th section of the “British North America Act, 1867,” be in force in Quebec in respect to the office of Lieutenant-Governor. The provision, however, is clearly one that relates to the office of Lieutenant-Governor, and as such is withdrawn from the legislative authority of the legislature of Quebec by the 92nd section of the Act last referred to.

In January last an Act passed by the legislature of the province of Manitoba, intituled : “An Act respecting the Lieutenant-Governor and his Deputies,” which contained a similar provision, and also a provision authorizing the Lieutenant-Governor to appoint deputies, was disallowed, on the ground that the Act was not within the legislative authority of the legislature of the province of Manitoba.

In the opinion of the undersigned this section should be repealed.

The undersigned respectfully recommends that the substance of this report, if approved, be communicated to the Lieutenant-Governor of the province of Quebec, and that in the meantime action be deferred in respect to chapters 34 and 98.

The undersigned having considered the other Acts passed by the legislature of the province of Quebec, in the session held in the year 1866 (chapters 1 to 33, 35 to 97, and 99 to 101 inclusive), recommends that they be left to their operation, and that the Lieutenant-Governor be so informed.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice on Chapter 39, approved by His Excellency the Governor General in Council on the 2nd April, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th March, 1887.

*To His Excellency the Governor General in Council :*

By the Act of the legislature of the province of Quebec, 49-50 Victoria (1886) chapter 39, after reciting that it would greatly assist the progress of public works and other improvements then going on in the province, if facilities were offered to corporations and institutions, or loan and investment societies, incorporated outside the limits thereof for the purpose of lending moneys, to lend and invest their moneys within the province, and that it is expedient to confer on such institutions and corporations or societies certain powers to contract, and also to hold immovables within the province, it is by the first section enacted as follows :—

“1. Any institution or corporation, or loan and investment society, duly incorporated under the laws of the Parliament of Great Britain and Ireland, or of the Dominion of Canada, for the purpose of lending or investing moneys, and authorized by statute, charter or instrument of incorporation, to lend money in this province, may, on receiving a license from the provincial secretary authorizing it to carry on business within the province of Quebec :

“1. Transact any loaning and investment business of any description whatever within the province, in its corporate name, except the business of banking ;

“2. Take and hold any mortgages on any real estate, and any railway, municipal, or other bonds of any kind whatsoever, on the security of which it may lend its money, whether the said bonds form a charge on real estate within the province or not ;



"3. Hold such mortgages in its corporate name, and sell and transfer the same, at its pleasure; and,

"4. In all respects have and enjoy the same powers and privileges with regard to lending its moneys and transacting its business as a private individual might have and enjoy;

"Provided every such corporation, institution or society, shall sell or dispose of any real estate which it may so acquire, by sale *en justice*, or by deed from the borrower or subsequent holder, in satisfaction of the loan, or under any agreement with the borrower or subsequent holder, within ten years from the date of acquisition.

"Saving pending cases, any such corporation, institution or society, which has hitherto done such loaning and investment business in this province, and which shall, within one year from the passing of this Act, obtain the license aforesaid, is hereby declared to have always had and to have lawfully exercised all the powers and privileges aforesaid."

In 1876, the legislature of Ontario passed a similar Act, (39 Victoria, chapter 27) which was left to its operation without comment. (*See ante*, page 145.)

A similar Act of the legislature of Manitoba (40 Victoria, chapter 15) was subsequently left to its operation, with the observation that the right of a provincial legislature to provide for the granting of a license by a province to a company incorporated by the Parliament of Canada, and which, by its Act of incorporation could be given the right to do business in the various provinces, is at least doubtful; but that inasmuch as similar legislation had been allowed to go into operation in the province of Ontario, no interference was recommended.

By the 11th item of the 92nd section of the "British North America Act, 1867," the legislature in each province may exclusively make laws in relation to the incorporation of companies with provincial objects, and by the 91st section of the Act it is, among other things in effect provided, that the Parliament of Canada may make laws in relation to the incorporation of all other companies.

Although any company incorporated by the Parliament of Canada must, within any province within which it is carrying on its business, be subject to all laws enacted by the provincial legislature (within its legislative authority) in the opinion of the undersigned, it is not within such legislative authority to provide that such a company shall not do business within the province without taking out a license for that purpose.

Apart altogether from the question of the relative powers of the Parliament of Canada and the provincial legislatures, it would, the undersigned thinks, be proper for your Excellency in council to disallow any Act of a legislature by which burdens were imposed upon companies incorporated by parliament, which were not equally imposed upon all companies doing business in the province, or by which such companies were subjected to any unfair or unjust discrimination.

By the 7th section of the Act of the legislature of the province of Quebec (49-50 Victoria, chapter 39), under consideration, it is provided that the fee to be paid by the company on the issue of such license shall be such as may be fixed by the Lieutenant-Governor in council. The 5th section requires the company obtaining a license to give certain notices, and the 2nd section establishes certain requisites which have to be observed before such company shall commence business.

In view of these provisions, the undersigned cannot regard the statute in question as merely an enabling Act, as the preamble might cause it to be viewed, and he is of opinion that unless the Act is amended by striking out the words "or of the Dominion of Canada," where they occur in the first and sixth sections, it should be disallowed, because it prevents the operation (within the province) of companies duly incorporated by the Parliament of Canada, without the compliance with certain restrictions which, in the opinion of the undersigned, the legislature of the province has no power to impose.

The undersigned recommends that the substance of this report, if approved, be communicated to the Lieutenant-Governor of Quebec, and that the further consideration of the Act be deferred for the present.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

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*Chancellor of McGill University to Sir John A. Macdonald.*

McGILL COLLEGE, MONTREAL, 23rd May, 1887.

DEAR SIR,—I regret to have for the first time, as Chancellor of the McGill University, to call your attention to an encroachment on the educational rights of the Protestants of the province of Quebec, in which this university as well as other educational institutions, is deeply interested.

Hitherto the guarantees given to the university under the Union Act have been in the main respected, so far as educational legislation is concerned; but recently Acts of the legislature, ostensibly referring to professional bodies, have been introduced, which seriously curtail our privileges.

More especially the Bar Act, passed in 1886 (49 and 50 Victoria, cap. 34, section 49) gives certain large educational powers to the council of the bar, a body in which Protestants necessarily constitute a small minority. Being in a professional Act, these did not at first attract the attention of educators, but regulations issued under them threaten to interfere with general education as carried on in Protestant institutions, and also more directly with the professional education provided by our faculties of law, in such a manner as to place Protestant students in a position of disadvantage not experienced before confederation, and which inflicts upon the Protestant population of Quebec disabilities of a very serious character, more especially when placed in comparison with the privileges enjoyed by the Roman Catholic minority in the province of Ontario.

Objection was at once taken to these regulations, and efforts were made to obtain remedial legislation in the last session of the provincial legislature; but though the leading men both of the government and the opposition expressed themselves as favourable to our claims, and though the two Protestant universities, and the Protestant committee of the Council of Public Instruction concurred in urging the necessity of immediate attention to the subject, yet owing to the shortness of the session, and other causes, no relief was obtained; and before the legislature can again meet we shall have entered upon another educational year, and shall without doubt experience serious injury.

In these circumstances, as the Act in question remains under the jurisdiction of the Dominion Government at least until the 15th day of June next, we beg respectfully to ask that it be disallowed, or if that course is not seen expedient, we beg leave to enter an appeal under the Act of Union against its operation;—and we feel it our duty to take all available steps to protect our universities and other educational institutions against serious injury that will be inflicted upon them in the meantime, should the objectionable legislation complained of continue in force.

In taking this course we beg to express our confidence in the willingness of the local legislature to do justice in the matter, and are prepared to apply to it in the next session for permanent relief; but we desire to obtain the immediate protection necessary to secure the interest of students in the approaching educational session.

I beg leave therefore, on behalf of the university to pray that immediate relief be given in the premises, and to express our willingness to present any evidence or documents that may be desired, in order that our prayer may be favourably entertained by his Excellency the Governor General in Council.

I beg leave to forward with this letter certain statements and petitions referring to the details of the enactments complained of.

I have, &c.,

J. FERRIER,  
*Chancellor.*



*Protestant Universities and Superior Schools in relation to the Professions and Professional Examinations.*

EXTRACT of Minutes of Meeting of Protestant Committee, Council of Public Instruction, held on Wednesday, 30th March, 1887.

"Resolved,—That the report of the sub-committee named to consider the relation of Protestant universities and Protestant superior schools to the professions and professional examinations be adopted, with the exception of that portion which may be supposed to raise the question of the constitutionality of section 49 of the Act 49-50 Vic., cap. 34, being an "Act respecting the Bar of the Province of Quebec," which in the opinion of this committee requires further consideration.

"And with the aforesaid reserve, that the said report be placed in the hands of the Premier of this province.

"And, in addition thereto, that the secretary of the committee be requested to draw up a statement setting forth the extent to which the course of study now followed in the Protestant schools in this province is affected by the provisions of said section."

ELSON I. REXFORD,  
*Secretary.*

*Protestant Committee of the Council of Public Instruction.*

REPORT of sub-Committee on the relation of the Protestant universities and Protestant Superior Schools to the professions and professional examinations :—

Complaint is made that the Bar Act of the last session has infringed on the rights and privileges of the Protestant minority in this province, as regards education. By that Act, both the general system of education, regulated by the Protestant committee of the Council of Public Instruction, and the general course of study followed in the Protestant universities (McGill College and Bishop's College), as well as the special law course of these institutions, have been interfered with and are now endangered.

In order to attain to a clear understanding of the question raised, it will be as well to consider :—

1. What are the rights and privileges secured to the Protestant minority by the Confederation Act (The British North America Act, 1867)?

2. In what respects have these rights and privileges been infringed upon or set aside?

The following extract from the Confederation Act gives in full the clauses referring to education :—

"Section 93. In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions :—

"1. Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have, by law, in the province at the union.

"2. All the powers, privileges and duties of the union, by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

"3. Where in any province a system of dissentient or separate schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor General in Council from any act or decision of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects, in relation to education.

"4. In case any such provincial law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council on any appeal under



this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

It is clear from these provisions that the differences known to exist in the several provinces on the subject of education were recognized, and that, while granting power to each province to make its own laws in relation to education, the rights of minorities were to be respected and maintained.

Clause 1 guards denominational schools established in the province at the union.

Clause 2 provides that the powers, privileges and duties conferred and imposed at the union in Upper Canada on Roman Catholics, shall be and are extended to dissentient schools, Roman Catholic or Protestant, in Quebec.

Clauses 3 and 4 give the right of appeal to the Governor General, and power to make remedial laws to the Parliament of Canada in case of need.

Now, under clause 1, the universities must be classed :

1. Bishop's College is an institution founded and governed by the Church of England in Canada.

2. McGill College is essentially Protestant.

3. Laval is essentially a Roman Catholic institution.

Therefore, no law should be or ought to have been passed, likely to affect prejudicially the rights or privileges of any of these institutions.

Selecting, in the first instance, the bar as a profession which has obtained special honours from the Legislature, let us examine its position at the union, in relation to education.

The Bar Act of 1866, 29-30 Vic., chap. 27, was in force at the time of Confederation. Referring to that portion of this Act regulating examinations and admission to study and practice, we find that :—

Section 26 prescribes that every council of a section may make by-laws to regulate the examination for admission to the study and practice of the profession of an advocate. \* \* \*

Three or five members of the bar who shall have practiced more than five years as advocates, were to be appointed as a committee to examine candidates.

The requirements for practice (*Vide* sec. 2, p. 1) :—

"That he has studied regularly and without interruption under a notarial agreement as a clerk and student, with a practising advocate, during four consecutive years ; or three consecutive years, if he has followed a regular and complete course established, which course of law shall be subject to the provisions hereinafter contained ; and that he has taken a degree in law in such university or incorporated college ; and such course of law may be followed at the same time that the student is serving his time of study under articles."

2. "The Governor, from time to time may require of all universities or incorporated colleges claiming to have established therein such a course of law, a report fully showing the detailed requirements of such course, and by Order in Council he may declare his approval thereof, if the same are deemed sufficient ; and he may prescribe such other and further requirements as may be deemed fit ; and no diploma or degree in law shall avail under this section, unless granted in conformity with the requirements of such Order in Council."

Such were the bar regulations at the time of confederation. After confederation the Bar Act was amended in 1869.

32 Vic., chap. 27, sec. 18 of this Act is interesting, as defining the meaning of "Liberal Education." It reads as follows :—

The liberal education required for admission to the study of the law shall include a complete course of classical study, viz. :—

"Latin rudiments, syntax, method, versification, belles-lettres, rhetoric and philosophy, inclusive, or any other complete course of classical study taught in incorporated colleges, seminaries or universities." No change or attempt to change the status of Protestants in the rights and privileges of the universities, was made under this Act.

In 1881 the Bar Acts were consolidated, and changes of importance were then made. Under section 33 of this Act the general council of the bar is substituted for the council of a section, in the control of the examination and qualifications of candidates for admission to the study of law, and by section 43 it is provided that, in addition to the liberal education hitherto deemed sufficient, the candidate "must pass a written and oral examination" on the subjects indicated in a programme printed and published under their (the examiner's) supervision or that of the council.

These changes seem to your sub-committee a direct infringement of the rights and privileges of the Protestant minority, as will be explained below.

Lastly, we come to the Bar Act of 1886—the Act of last session—49-50 Vic., chap. 34. By this Act further aggressive action is taken in favour of the general council. *Vide* section 41, and following.

We find that under section 49 the general council is substituted for the Lieutenant-Governor, in the powers before that time given to the latter to inquire into, and when needed, to prescribe the law course of the universities. The general council may from time to time determine the subjects which shall be studied, and the number of lectures which shall be followed in each subject to constitute a regular law course.

And further, the curriculum so established shall not be altered except by a two-thirds vote of the members of the general council, and the degree in law, as well as the law course, shall avail only in so far as the prescribed curriculum has been effectually followed by the university or college.

There is also a lengthening of the period of clerkship even to the holder of a degree under the above conditions, instead of a three years' course he is made to serve four years with a practising advocate.

Thus far your sub-committee have dealt with the case of the bar, but they regret to say that they are led to believe, on what they deem high authority, that the medical profession is also about to seek legislative powers so as to introduce changes into the medical list which tend in the same direction as those complained of in the Bar Act of last session.

The cases of the two professions are not absolutely identical, for on the governing body of the medical profession the universities are represented, (*vide* 40 Vic., cap. 26, sec. 4, and 43-43 Vic., cap. 37, sec. 4,) which is not the case with the bar. As however, no medical bill has yet—so far as your sub-committee is aware—been prepared, it is of course impossible to know the exact nature and extent of the powers to be asked for, but your sub-committee have reason to believe that the present system of examination for the degree in medicine and surgery which take place in the presence of assessors, and qualify candidates for the license to practice as well as for the degree of C. M. M. D. (*vide* 42-43 Vic., cap. 32, sec. 13), is to be changed, and the University degrees are to be henceforth treated as purely honorary, the license to practice being given only after a separate and purely professional examination.

Your sub-committee would see no objection to this, if there were a general Medical Examination Board for the whole Dominion, on which the universities could be represented, so that the university degrees in medicine and surgery, as well as the license to practice would follow the results of this examination. In this way the tone and status of the profession would be raised, and the C. M. M. D. of Canada would rank with any like degree in the world.

But failing this broader view of the question, your sub-committee see no advantage in the change from the present system. As to the examination for admission to study, it is purely a general educational question, not a technical one, and your sub-committee deprecate any interference on the part of professional bodies in the matter of general education, as followed in Protestant schools under the control of the Protestant committee. All that any professional body is entitled to claim is that candidates for study should be proved to have had a liberal education. It must be clear to every thinking mind that privileges conferred upon members of a profession in their corporate capacity, are so conferred in the interests of the public. They are not for the private benefit of the members of such profession. The legal, the medical and other professions are no doubt very important bodies to whom are committed the fortunes and lives of the



citizens generally, and special obligations, as well as great privileges, are imposed and conferred on them for the public benefit. It is, therefore, a matter in which the general public are concerned that due care should be exercised as to the admission of candidates, both to the study and practice of these professions. But that these professional bodies should become close corporations with power to bar the doors against all but persons whose liberal education has been carried on only after the programme of each profession, is a monstrous evil which needs only to be mentioned to be condemned.

So long as the Lieutenant-Governor in Council—the head of the State—exercised a power on behalf of the citizens at large, all was well, more especially as it was understood that there would be no interference, except in case of some acknowledged abuse, but to transfer this power to a professional body which, by its very nature and constitution, must be considered one-sided and partial, is, on the face of it, open to very serious objections.

The danger lies in the fact that the proportion of Protestants to Roman Catholics in this province is only as one to six, and by the constitution of the general council of the bar, that body will have a large number of its members, perhaps all, Roman Catholics.

There was a certain amount of danger when the control lay with the councils of sections, but as in Protestant districts there was a tolerable certainty of Protestant representation in the council, there was nothing serious in this danger.

But the programme of the general council ignores Protestant education altogether by the introduction of subjects extraneous to the system.

They put aside the well-known fact that so diverse are the systems of Roman Catholics and Protestants, that two committees of the Council of Public Instruction exist.

The provisions—quoted above—made at the time of confederation recognize this divergence, and guard the rights of minorities, whether Roman Catholic or Protestant.

Your sub-committee can come to no other conclusion than the following :—

1. That the attention of the government be formally called to the serious disadvantages from which the Protestant population of this province are now suffering, through the operation of the Bar Act of last session, which in many of its clauses infringes on their rights and privileges.

2. That a demand be made for the abrogation of the objectionable clauses of the said Act.

3. That in order to guard against a recurrence of the evil complained of, the legislature be requested to make provision for the appointment of two examining boards for the examination of candidates seeking to enter on the study of all or any of the professions.

4. That one of such examining boards be Roman Catholic, the other Protestant, and that each board be appointed by its own proper committee of the Council of Public Instruction.

5. That the Arts degrees of the universities be recognized, as entitling the holders of such degrees to enter on the study of any profession without preliminary examination, on the ground that these degrees constitute in themselves the best possible evidence of a liberal education.

6. That no interference in the curriculum of study of any faculty of any university by any professional body be allowed, but that the principle of the law, giving power to the Lieutenant-Governor to inquire into, and if needs be, prescribe the course of study, be restored, it being taken for granted that due care would always be shown in instituting such inquiry.

That no privilege be granted to any university not shared by the others now existing in this province, or which may tend to the disadvantage of any one of such institutions.

All which is respectfully submitted.



STATEMENT concerning the relation of Protestant Superior Schools to the Professions and Professional Examinations, prepared in accordance with the resolution of the Committee.

The legislature of the province has provided two separate systems of superior education to meet the requirements of our mixed population, which it maintains by large annual subsidies.

Under legislative sanction the Protestant committee has put into operation a complete course of study, which leads by regular steps from the lowest class in the primary school, through the Protestant superior schools to the last year of the university course. This is a thorough course, similar in its extent and requirements to that followed in the sister provinces of the Dominion, in the United States and in England. In the superior schools where this course is followed, the young men from the Protestant section of the population receive their education, and they have a right to expect that, after they have completed a course sanctioned and subsidized by the legislature of the province, their course of study will be recognized in any provisions which the legislature may make for literary examinations. Protestant young men find, however, on presenting themselves for the examination for admission to study prescribed by the Council of the Bar, that the examination is based upon the course of study followed in the Roman Catholic superior schools, and that their own course of study has not been considered.

These disadvantages and difficulties under which candidates from Protestant superior schools are thus placed, arise from three prominent differences in the course of study followed in the Roman Catholic and Protestant institutions.

*First.*—There is a difference in the subjects included in the two courses.

For example.—The subject of "*philosophy*," which forms a prominent feature in Roman Catholic superior schools, is entirely unknown as a school subject among Protestants.

*Second.*—The order in which the several subjects of the course are presented to the student is quite different in the two courses.

Elementary mathematics, which comes in at very early stage in Protestant schools, is postponed to a much later point in Roman Catholic institutions.

*Third.*—There is a marked difference in the two courses as to the relative importance attached to the different subjects, as indicated by the marks given for the several subjects and by the percentage required to pass according to the bar examination. For *philosophy*, two hundred and fifty marks are given and half marks are required to pass, whereas for the five subjects—arithmetic, algebra, geometry, chemistry and physics—only two hundred and fifty marks are given, and one quarter of total marks and one-seventh marks in each subject are required for passing. Such a system of marking bears very heavily upon candidates from Protestant superior schools which give prominence to the last five subjects and omit "*philosophy*."

It is evident from these references, which could be multiplied, that the action of the council of the bar and all similar actions, is a serious interference with our Protestant superior schools. Under the circumstances, it seems only right and reasonable to demand, on the part of these institutions, that these difficulties be removed, either first by providing two separate examinations based upon the courses of study followed in the Roman Catholic and Protestant institutions respectively, or, second, by having one examination so far as the courses of study are in common, and allowing options when the two courses diverge.

#### UNIVERSITIES AND THE PROFESSIONS.

(From "*Montreal Gazette*" of 13th and 15th April, 1887.)

To the Editor of the Gazette :

SIR,—I venture to ask for space in your paper to remark on the "educational" clauses, if I may so call them, of the Bar Act of the last session of the provincial Parliament.

I am glad to find that public interest is aroused on this subject. It is a hopeful sign, and the discussion cannot but be productive of good results, if "temper" can be kept within bounds. In stating my view of the case I shall endeavour to be as brief as possible.

The Bar Act of last session provides :—

"1. That the examination of candidates, both for study and practice, shall be under the control of the 'general council.'

"2. That three examiners—members of the bar—are to be appointed by each section of the bar. But it is in the power of the 'general council' to change this number and the period of their service. These examiners are to be divided into two boards, one for admission to study, the other for admission to practice.

"3. In addition to these examiners, the 'general council' may appoint persons selected from outside the profession to assist the examiners in the written and oral examination of candidates for study.

"4. Every candidate for study must prove to the satisfaction of the examiners that he has received a 'liberal and classical education,' and undergo to their satisfaction a 'written and oral examination in the subjects indicated in the programme of the general council.'

"5. The proceedings and decisions of the examiners cannot be attacked, and all their decisions are final and without appeal."

Such is a short *résumé* of the regulations as to candidates for study.

The questions which arise in the mind in considering these regulations are as follows :—

1. What is the constitution of this "general council" to whom such powers are entrusted ?

2. What is meant by that "liberal and classical education" of which the candidate is to make proof ; and what is likely to be the nature of the "programme" which the general council has power to prescribe ?

Let us discuss these questions in order :—

1. The general council is composed of the *batonnier* and a delegate from each of the sections of Montreal, Quebec, Three Rivers and St. Francis, and of the *batonnier* of Arthabaska and Bedford, and of each of the sections which may hereafter be established. To this representative body is added the secretary-treasurer of the general council—who is elected by the council. Thus the present body consists of eleven members, the majority of whom form a quorum, and the president—who is *batonnier* of the province—has a casting vote in addition to his ordinary vote. Now, if it be borne in mind that the Protestant population of the province is as one to six, as compared with the Roman Catholic population, it cannot be considered as an unlikely conclusion that the majority of the general council will always be Roman Catholic, and the council may be entirely composed of Roman Catholic members. The present council consists of seven Roman Catholics and four Protestants, the representative *batonnier* from Sherbrooke being a Protestant. A Roman Catholic has more than once filled this office in Sherbrooke, and a Roman Catholic will undoubtedly be again elected, for I believe, in our happy community, but very little, if any, race or religious jealousy exists amongst the members of the legal profession.

2. But it is well known that the Roman Catholic and Protestant theories of education in this province differ widely, and have so differed for many years before, as well as since confederation. It is only necessary, in proof of this assertion, to point to the two committees of the Council of Public Instruction entrusted with the oversight of public education in this province. Applying this recognized fact to the case in point, of the powers given to the general council of the bar to prescribe a programme of study, and it will be seen that this programme may be, and most likely will be, based on the Roman Catholic theory of education alone.

A mere enumeration of subjects taught in the schools and colleges might lead a superficial observer to believe that the same system is in force in the schools of each class of the population, but the practical educationist knows that, even in the study of Latin,



Greek and mathematics, different systems and different text-books prevail, and that in history, philosophy and some other subjects, fundamental differences exist.

It is not, therefore, unreasonable to conclude that the Bar Act of last session, by the provisions above referred to, unintentionally no doubt, but not the less really, did strike a blow at the system of education in vogue amongst the Protestant minority, and infringed on the rights and liberties of Protestants as guaranteed, or supposed to be guaranteed, at confederation.

It may be claimed that the Roman Catholic members of the general council have never infringed or intended to infringe, on Protestants' rights or privileges, and have invariably treated their Protestant *confrères* with courtesy and liberality. I believe this to be true so far as intention goes, and I am the last man in the world to raise a religious or sectional cry amongst a population so mixed as is that of this province. But I hold that such grave matters should not be left to good-will or good intentions. All that is claimed by Protestants is to have equal rights with their Roman Catholic fellow-citizens, and the best way to secure good-will is to have the terms of the agreement strictly defined. What is needed, therefore, is that there shall be two separate boards of examiners for the examination of candidates seeking to enter on the study of any or all of the professions—one of these boards to be representative of the Roman Catholic system of education, the other of the Protestant system.

In this way, candidates will be examined under the system of the schools in which they have been educated, and the rivalry will be without jar, leading to no feeling of injustice or want of harmony.

The object of combining the examination for all the professions, instead of delegating to each body the power to have its own special preliminary examination is that, for admission to study, all that is really needed is proof of a "liberal education," and it would be impossible in any academy or high school to prepare students for half a dozen different professions, if each professional body demanded a special programme of study. The unfortunate principal of an academy has already quite enough to do to comply with the regulations already in force, demanding the careful teaching of the English language and literature, of Latin (Greek is optional, but the teacher must be prepared to teach it on the demand of the student), of French, of Euclid, algebra, arithmetic, history, geography and drawing. Surely, a student who has passed in these subjects, and is thereby enabled to matriculate in a university, must be pronounced qualified to enter into any of the several technical and special subjects required for professional training. Apart from the different method of teaching, and the difference in text-books in Roman Catholic and Protestant schools, Roman Catholics give a certain amount of training in their colleges in "philosophy." I am not aware to what extent this is carried, but I am informed that it differs materially from the treatment of the same subject in the Protestant universities, where it forms, with logic and rhetoric, a part of the B. A. course. It is however, not taught in Protestant academies or high schools. It is treated as an advanced subject, and forms, as above stated, part of the university course.

But if the professional bodies insist on a higher training than is given in the Protestant academies, then let them encourage university training. If students of matured minds are alone to be admitted to the study of a profession, the acceptance of the university degree of B. A. should be acknowledged as a sufficient qualification. The men who have devoted three or four years to abstract studies and passed the B. A. examination have given the best possible proof of their fitness for entering on technical studies. The bar declines to acknowledge this, and the medical profession (if the meeting recently held in Quebec be taken as the exponent of the opinions of the whole medical profession) follows suit. It is said that objection is taken to the teaching in some of the French incorporated colleges, and the graduates of the Protestant universities must suffer because of the defects of those institutions. The statement may be true or not, but Protestants have nothing to do with it; it lies out of their control. If true, it supplies another strong argument for separation in examination by two examining boards. The feeling among educated Protestants is that if their universities cannot qualify men to enter on the study of the law, of medicine, of engineering, or the



notarial profession, of theology, or of any technical subject, then university education is a mere delusion, and universities are useless and costly absurdities. And if this be so, the universities of the civilized world, old and new, should be abolished. The University of London, and the new University of Victoria, in the manufacturing districts of England, the Scotch and Irish universities, are all heavily subsidized by the State. All this is wrong, the money is wasted, if a university training yields no practical result. Instead of universities, each professional body must, for itself, establish schools and training institutions for the qualification of candidates. Such a result would be, in my humble opinion, to cramp the mind, to reduce it to a mere machine. It would give educational sanction to the "division of labour," under which fourteen different operatives are required to spend their lives in the fourteen different operations involved in the manufacture of a pin.

Such seems to me to be the logical conclusion of the demand, that to each separate professional body should be committed the power to control and regulate the nature and extent of the education of candidates desirous of entering on professional studies. I have carefully avoided any reference to the other question of the admission to practice, which, as a professional question, only indirectly affects the public. The wish was to discuss each part of the subject on its own merits, and to avoid confounding them.

The only remedy for the evils pointed out is by an amendment to the Bar Act, which shall abrogate the objectionable clauses, and substitute regulations, clearly and finally (I hope) settling the question in the manner I have indicated, so far as the legal profession is concerned, or to make the requisite rules and regulations a part of the educational law of this province.

Yours obediently,

R. W. HENEKER.

SHERBROOKE, 12th April, 1887.

### PROFESSIONAL EDUCATION.

To the Editor of the *Gazette* :

SIR,—In my former letter, I limited my remarks to the question of the admission to study. I will now touch upon the other point, not less interesting, but more professional—the regulations as to the admission to practice.

I propose, in the first place, to consider the reasons which must have weighed with the legislature in granting charters of incorporation to persons engaged in professional pursuits.

All civilized nations have, I believe, felt it to be wise to grant special powers to professional bodies, but such powers are granted, not for the private benefit of the grantees, but because the interests of the public are thereby served.

No one will, I feel sure, gainsay for one moment that great advantages accrue to the public through the incorporation of professional bodies, to whom are committed, more or less, the lives, the health, the property and the liberty of the people.

The responsibility thrown on professional men demands care on their part that fitness, and professional character, and honour are maintained.

The principle is not new. Trades, as well as professions, were governed by "guilds" in the middle ages; and even to the present day, in some countries, no man can exercise a trade, without serving a long apprenticeship with a master mechanic.

That large power should therefore be given the professions in this respect is, in my opinion, a correct principle, but such powers must be used in the public interest, and they must not run counter to, but be in accordance with, other established rights and privileges also granted for the public good.

The question for consideration then may be classed under three heads, viz. :—

1. Does the Bar Act give such powers as conflict with the public interest ?

2. Do the powers given in the Bar Act run counter to, or encroach on, other established rights and privileges?

3. If so, is this encroachment excusable in the public interest?

It will be seen that I make the "public interest" the ultimate test.

In connection with the first of these questions, it will, I think, be admitted that it is desirable in the public interest, that none but trained minds should enter in the practice of the professions, and it is of importance that there should be training schools for the instruction of candidates in the theory, as well as in the practice of the professions.

The only training schools in this province where "theory" can be studied, are those founded and maintained by the universities,—familiarity with practice is obtained in law in the office of a practitioner; in medicine, by attendance in the hospitals.

Each part of the training is important, the one as important as the other—but both together assist in educating the professional man.

Now, if the effect of the Bar Act is to close the university schools by imposing a curriculum on them which they cannot follow, not the professions only, but the general public must suffer. And this, it is declared, will be the consequence of the committal to the general council of the bar, of the power of prescribing the course of study to be followed in the universities; a course of study be it remembered, which does not carry with it any privilege of practice, but simply gives the university graduate the privilege of one year's shortened service with a practitioner—and does not exempt him from the bar examination.

The professors of the two Protestant universities unhesitatingly declare that the obligation to give 1,050 lectures in a three years' course is neither necessary, nor of advantage to a student, and yet involves such a sacrifice of time on the part of the professors themselves, that very few of the leading practitioners will give the time for the work of preparing and delivering the lectures.

The student also, who has to follow such a course, must give his whole time to his lectures, and thereby lose to a great extent the benefit of his practical training in the courts, and in the office of his "patron."

I am quite aware that it is a moot question, but there undoubtedly seems to be "point" in the argument, and it surely cannot be for the public interest that two out of the three university training schools should be closed to students, and that but one (that one a French university, demanding more or less intimate acquaintance with the French language,) should be left for the study of the theory of the law.

Then, the universities maintain that the power committed to the general council of the bar directly interferes with their rights. They are willing to submit to guidance, in the public interests, from the Governor or Lieutenant-Governor, the head of the State, but they repudiate dictation from a professional body. They will rather close their schools than submit to such dictation.

It must be borne in mind that, when mention is made of the universities in this argument, the real objectors are those professional men who form the particular faculty of the university, with others who value university training as something higher and broader than mere professional training.

If the result of closing these schools be brought about, then the study of law in the universities will be confined to those broad principles of law which every educated man should understand.

Some may argue that this result would be really to the advantage of the public, but, if carried out, must necessarily involve a complete change of system. In such case, the professional bodies must themselves establish law schools, with a staff of professors for teaching the theory of the law, and this will not settle the never ending dispute between these two systems—except by forcing on the minority the will of the majority.

The answer to my third question is involved in the answer to the other two, and public discussion, not mere professional discussion, seems necessary on this subject.



I am, myself, not prepared to give a definite answer to the principle involved, but it seems to me that due care should be taken, even on the part of an overpowering French majority of the bar, not to precipitate matters. It is of vital interest to the country that the two sections of the people should live in harmony, without any grievances, real or fanciful, to embitter the relations between the two.

As regards the universities, I feel that in this new country we must, if we are to hold any position in the world, train our men, and train them highly, for the work we expect of them. And this can only be done through the universities.

I ask any impartial man to look at the class of men who govern England to-day—whether known as Conservatives, Liberals or Radicals—such men for instance as Mr. Gladstone, Lord Salisbury, Mr. Goschen, Mr. John Morley and the late Lord Iddesleigh (Sir Stafford Northcote). Such men are the products of English universities.

I say then, avoid carefully the weakening of our university system. It is weak enough as it is, and requires the support of men of a high class, as well as of money. In time the ball will gather as it rolls, and we may hope to show a good result from institutions founded in faith and love, and carried on under adverse circumstances with self-denial and hope.

Do not let us weaken its influence, or throw unnecessary impediments in its way.

Your obedient servant,

R. W. HENEKER.

SHERBROOKE, April 13th, 1887.

STATEMENT on behalf of McGill University respecting the relations of General and Professional Education in the Province of Quebec, in connection with the Protestant educational system.

I. With reference to the examinations preparatory to professional study, the attention of those interested in general and professional education is invited to the following facts:—

1. The Protestant population possesses, under legislative sanction, and under the control of the Protestant committee of the Council of Public Instruction and of the Department of Education, a complete course of study, extending from the elementary schools to the universities. In this course, definite and rigorous examinations are conducted in every grade by the best examiners the province can afford, and it is believed that this system provides an education equal to that exacted in any country, for entrance into the study of the learned professions. The certificates and degrees based on this course of study and its examinations, are now accepted for the above purpose in the other provinces of the Dominion, and also in the medical and law schools of Great Britain and Ireland.

2. It is held that the councils of the several professions should content themselves with fixing the stage in the general education provided under the educational law, which may be necessary for entrance into professional study, and should allow the attainment of this to be ascertained by examiners under the two committees (Roman Catholic and Protestant) of the Council of Public Instruction. Should the professional bodies desire any amendment in the course of study, this can best be attained by application to the educational authorities charged by the law of the province with this duty.

3. The action of the professional councils, in instituting separate examinations, is injurious to education, by exacting requirements not always in accordance with each other, nor with the systems of education in the province. Such action consequently tends to the frittering away of the time and energies of teachers and pupils, to incomplete courses of study, to the substitution of "cram" for actual education, and to many failures in examinations.



4. Special injustice is inflicted on the Protestant population, when only one preliminary examination exists, and this based principally on the educational methods of the majority, which are in many respects dissimilar from those of the Protestant schools, even when the names designating the subjects are the same. This is aggravated by a scale of marking, attaching great comparative value to subjects such as "philosophy," as taught in the system of the majority, and to which Protestant educators do not attach so much importance as a part of preparatory education.

5. Whatever opinions may be entertained as to the relative values of the Roman Catholic and Protestant systems of education as existing in this province, it is certain that both are recognized by law, and that in the Confederation Act, guarantees were given to the minority that its system would not be interfered with, or rendered invalid for practical purposes. It is believed also that the Protestant system has proved itself at least equal to the other, even under the present disadvantages.

6. The degree of Bachelor of Arts, as granted by the Protestant universities, after courses of study and consecutive examinations extending over three or four years beyond the academy or high school standard, implies the highest kind of preparation attainable in this Dominion or elsewhere. This degree is accordingly accepted for entrance into the highest professional schools of the mother country and of the other provinces, and the fact that it is not accepted in this province is a reproach to our country, a disparagement of our universities, and a great discouragement to the higher education.

For the above reasons it is held by the Protestant committee of the Council of Public Instruction, and by the Protestant universities:—

(1.) That the degree of Bachelor of Arts should be accepted as evidence of qualification to enter on the study of any profession.

(2.) That for those not possessing this degree, there should be one public examining board, acting under the educational authorities of the province, and providing for entrance into the study of all the professions.

(3.) That this board should be divided into two sections, for Protestant and Roman Catholic candidates respectively.

(4.) That the action of the professional councils in reference to general education, should be limited to indicating to the examiners the extent of the examination required for entrance into the several professions, and to securing certificates of the same from the examiners.

The above provisions are substantially those of the Hon. Mr. Lynch's bill, now before the legislature, and it is hoped that the professional councils will concur with the universities and the educational authorities in favouring this measure, the effect of which it is believed will be to secure a much higher standard of preparatory education than that now attained.

II. With reference to the examination for license to practice, it is held by the universities:—

1. That their courses of study should be respected, and should not be interfered with by the professional councils, except in case of any grave abuses; since it is not the councils, but the universities, that are recognized by royal charters and legislative enactments, as teaching bodies.

2. That the privileges with reference to admission of graduates to practice, heretofore enjoyed by the Protestant universities, cannot constitutionally be withdrawn by any action of the provincial legislature; and that it is not in the interest of professional education that these privileges should be relinquished, in favour of a central professional examining board distinct from the universities.

3. That the action of the professional councils with reference to the professional faculties would be most beneficial, if limited to such reasonable oversight, through the provincial government or by assessors or otherwise, as might be agreed on; and which, while respecting the chartered rights and guaranteed privileges of the universities, should satisfy the professional councils as to the sufficiency and proximate equality of the courses of study pursued and examinations required.

MONTREAL, May 10th, 1887.

The following documents are submitted as confirmatory of the above statements and claims :—

(1.) *Resolutions of the Protestant Committee of the Council of Public Instruction, (March 30th, 1887.)*

1. That the attention of the Government be formally called to the serious disadvantages from which the Protestant population of this province are now suffering, through the operation of the Bar Act of last session, which in many of its clauses infringes on their privileges.

2. That a demand be made for the abrogation of the objectionable clauses of the said Act.

3. That in order to guard against a recurrence of the evil complained of, the legislature be requested to make provision for the appointment of two examining boards for the examination of candidates seeking to enter on the study of all, or any, of the professions.

4. That one of such examining boards be Roman Catholic, the other Protestant, and that each board be appointed by its own proper committee of the council of public instruction.

5. That the Arts degrees of the universities be recognized, as entitling the holders of such degrees to enter on the study of any profession without preliminary examination, on the ground that these degrees constitute in themselves the best possible evidence of a liberal education.

6. That no interference in the curriculum of study of any faculty of any university by any professional body be allowed, but that the principle of the law, giving power to the Lieutenant-Governor to inquire into, and if needs be, prescribe the course of study, be restored, it being taken for granted that due care would always be shown in instituting such inquiry.

7. That no privilege be granted to any university not shared by the others now existing in this province, or which may tend to the disadvantage of any one of such institutions.

(2.) *Statement concerning the relation of Protestant Superior Schools to the Professions and Professional Examinations, prepared by the Secretary of the Protestant Committee, March, 1887.*

The legislature of the province has provided two separate systems of superior education to meet the requirements of our mixed population, which it maintains by large annual subsidies.

Under legislative sanction the Protestant committee has put into operation a complete course of study, which leads by regular steps from the lowest class in the primary school, through the Protestant superior schools to the last year of the university course. This is a through course, similar in its extent and requirements to that followed in the sister provinces of the Dominion, in the United States and in England. In the superior schools where this course is followed, the young men from the Protestant section of the population receive their education, and they have a right to expect that, after they have completed a course sanctioned and subsidized by the legislature of the province, their course of study would be recognized in any provisions which the legislature may make for literary examinations. Protestant young men find, however, on presenting themselves for examination for admission to study prescribed by the council of the bar, that the examination is based upon the course of study followed in the Roman Catholic superior schools, and that their own course of study has not been considered.

These disadvantages and difficulties under which candidates from Protestant superior schools are thus placed, arise from three prominent differences in the course of study followed in the Roman Catholic and Protestant institutions.



*First*,—There is a difference in the subjects included in the two courses.

For example,—The subject of "*Philosophy*," which forms a prominent feature in Roman Catholic superior schools, is entirely unknown as a school subject among Protestants.

*Second*,—The order in which the several subjects of the course are presented to the student is quite different in the two courses.

Elementary mathematics, which comes in at a very early stage in Protestant schools, is postponed to a much later point in Roman Catholic institutions.

*Third*,—There is a marked difference in the two courses as to the relative importance attached to the different subjects, as indicated by the marks given for the several subjects and by the percentage required to pass, according to the bar examination. For *Philosophy* two hundred and fifty marks are given and half marks are required to pass, whereas for the five subjects—Arithmetic, Algebra, Geometry, Chemistry, and Physics—only two hundred and fifty marks are given, and one quarter of total marks and one-seventh marks in each subject is required for passing. Such a system of marking bears very heavily upon candidates from Protestant superior schools, which give prominence to the last five subjects and omit "*Philosophy*."

It is evident from these references, which could be multiplied, that the action of council of the bar and all similar action, is a serious interference with our Protestant superior schools. Under the circumstances it seems only right and reasonable to demand, on the part of these institutions, that these difficulties be removed, either first by providing two separate examinations based upon the courses of study followed in the Roman Catholic and Protestant institutions respectively, or, second, by having one examination so far as the courses of study are in common, and allowing options when the two courses diverge.

(3.) *Extracts from the Report of a Committee on Recent Regulations respecting Professional Examinations, presented to the Corporation of McGill University, January 27th, 1887, and adopted by that body.*

The points which appear to your committee most important in relation to the interests of the university, and of the higher Protestant schools, are the following:—

1. That it is just and expedient that, in the case of Protestant candidates for examination for entrance into professional studies, the courses of study prescribed by the Protestant committee of the Council of Public Instruction, for the highest grade of the academies, and those of the Protestant universities for matriculation, should be fully recognized as valid and sufficient.

2. That in the case of those who have taken the Degree of Arts of the universities, this degree should be recognized as qualifying to enter on professional study without further examination. In all other countries possessing universities, this privilege is given, and it is obviously expedient, as inducing candidates to pursue a thorough preparatory education. It is also submitted in this connection that the course of study in Arts in the Protestant universities is in every respect adequate, and is equal to that given in other countries, and to which such privileges are there granted.

3. That with reference to the entrance on professional practice, the Protestant universities have a right to claim: (1.) That their royal charters should be respected, as giving them the right to determine the courses of study adequate for professional as well as other degrees. (2.) That under the Confederation Act they can claim the continuance of all educational "rights and privileges," possessed by them before confederation. (3.) That it is especially unjust that powers bearing on the educational rights of Protestants should be handed over to professional councils, of which a majority must consist of men trained under a system, very different from that of the Protestant universities.

Your committee would therefore recommend that the above statements be forwarded to the Protestant committee of the Council of Public Instruction, through its



sub-committee, and that it be requested to take such steps in the premises as may seem best fitted to secure the rights of Protestant education with reference to professional study, whether in law, or medicine, or in other professions.

Your committee would further ask the attention of the corporation to the proposals of the medical council, intended to be submitted to the legislature at its next meeting, to withdraw the present rights of medical graduates to registration, and would recommend that the privileges of the University, under the Act of Confederation, be especially urged in relation to this matter.

#### THE RELATION OF M'GILL UNIVERSITY TO LEGAL EDUCATION.

To the Editor of the *Gazette* :—

SIR,—The subject of professional education is not usually very interesting to the general public, but at a time when we are practically told that all we have laboured to establish here, in connection with our Protestant universities, must be abandoned in favour of the system of the French majority, and that our universities and professional schools are not needed in a province already provided with education supposed to be suitable to the greater part of its people, it is well that the friends of education should give a little attention to the subject. Dr. Heneker has already ably argued on public grounds the claims of the law courses of the universities, as well as those of the institutions of general education in connection with the preliminary examinations, and I now wish to follow this up with some special statements respecting the Law Faculty of McGill, the older of the two connected with the Protestant universities, and which seems particularly aimed at in some statements which have been made in your columns and elsewhere.

The time was when professional education was limited to an apprenticeship with a practitioner, but that has long since passed away in all civilized countries, and systematic teaching by learned and able professors is held to be indispensable. This work has in every country devolved largely on the universities, and has been carried out most successfully by them. In this province, and in the case of a university, intended specially to provide for the higher education of the English-speaking minority, it appeared from the first, essential that professional education should be attended to, and McGill has taken a leading place, not only in this province, but in the Dominion of Canada, in its schools of law, medicine and applied science, and this greatly to the advantage of Montreal and of the province generally.

The McGill faculty of law was organized immediately after the amended charter of 1852 had been secured, and was an object of special interest to two members of the board of governors who have now passed away, and to whom Canadian education owes much, the late Chancellor of McGill University, the Hon. Judge Day, and the Hon. Judge Dunkin. Both of these gentlemen gave much time and thought to the regulations of the new faculty, which consisted at first of the Hon. Judge Badgley, the Hon. Mr. Abbott and the late Hon. Judge Torrance, but has since been enlarged, until at present it has seven professors and a lecturer, while its course of study, originally planned by the eminent men above named, has, like those in our other faculties, been greatly extended and improved, and this to such an extent that the number of lectures delivered since 1872 has been double that in the earlier sessions of the faculty. Even since 1885 the course has been still farther enlarged and rearranged.

It might almost be inferred, from some statements which have been circulated, that students can enter into the classes of the faculty without any matriculation examination. On the contrary, every student must pass an examination before entering into the first year. As stated in the calendar, in which its details are annually advertised, this includes Latin, English and French, Mathematics, History, and even a certain amount of Rhetoric, Logic and Ethics, which take the place of "Philosophy," respecting which so much has been said. Graduates in Arts are, of course, received

without examination. The course of study extends over three years, and provides for a very wide range of legal acquirements, the details of which are stated in the university calendar. It has been said that the lectures have not been actually delivered, but this is quite incorrect. The session is divided into two terms, each professor delivering a daily lecture during one of these terms, so that four of these professors lecture in the first term, and three in the second. According to the returns made by the secretary of the faculty, over 300 lectures were delivered in the session just closed. I do not admit, however, that the value of our course in law is estimated merely by the number of lectures. Quite as much depends on the nature of the lectures, and on their tendency to aid and stimulate reading, study, and independent thought on the part of the student. Much also depends on the judicious division of the subjects between the different years. It is thus quite conceivable that, under favourable circumstances, four or five hundred lectures may be more valuable to a student than the one thousand and more, which the secretary of the council of the bar desires. It is also to be observed that law students are usually under apprenticeship, and are obliged to devote the greater part of their time to office work.

The students are required to attend regularly and punctually, and examinations are held at the end of each term with a final examination for the degree, so that each student has to pass six examinations by written papers, in addition to the matriculation examination, and has also to prepare a thesis before graduation. That occasional interruptions should occur in some sessions in certain courses of lectures delivered by professors in actual practice is inevitable, but such blanks have been supplied as far as possible by additional lecturers, and when professors, by reason of legislative or judicial duties, have been unable to attend to their lectures, they have retired in favour of others, or have been placed on the list of emeritus professors. It is quite easy, however, for persons disposed to be critical, to magnify the omission of a few lectures in one course, owing to some accidental cause, into an entire failure to deliver lectures. The names of Kerr, Trenholm, Archibald, Lareau, Hutchison, Robidoux and Davidson, who constitute the present faculty, are a sufficient guarantee for the character and good faith of the course.

When the great importance of the legal profession is considered, and the fact that the judicial bench as well as the halls of legislation and many important public offices demand a high legal training, it is evident that the continuance of such a course of study is of the greatest value to the community, and the public may entertain the utmost confidence that the university, for its own credit and in the interest of the higher education, which it is its special business to sustain, will neither permit students to enter without preparation, or graduate without a regular course of study and a searching examination, while it also offers a gold medal, honours and prizes, as rewards to stimulate special effort. All this can and will be done quite independently of the council of the bar, and without any legal compulsion on the part of that body. I may add that, while I object on every principle of sound education and civil right to place the curricula and examinations of our Protestant education in the hands of the professional councils, I feel confident that their interference, in the manner indicated in the recent regulations of the Council of the Bar, will degrade and not elevate the legal profession.

The results of the system which this university has pursued are apparent in its list of graduates. We have at present a little over 400 bachelors of civil law, of whom a few have been removed by death, and some have settled in other provinces of the Dominion or in the United States, but the greater number are actively and creditably pursuing their profession in this province. In glancing over the names on our list, I observe that at least forty represent men who are, or have recently been, members of the Dominion, or local governments or legislatures, or who are occupying judicial or other important public positions, and several of these are graduates in arts as well as in law. This is an evidence that here, as in the mother country, the university training tells in the higher walks of professional and public life, and that the particular form of such training represented by our Protestant educational system is highly efficient in



this respect. The large number of French names on our list of graduates reminds me that we have been working in this department for both of our people, and that no distinctions of creed are known in our professional classes. The university has a right to expect that in the present crisis all its graduates, of whatever race or creed, will remember the benefits they have received from it, and will actively defend its educational rights.

The above statements will, I hope, serve to show that it is the duty and interest of the public to sustain the general educational system of the country and the universities, against the encroachments of the professional councils, however well meant these may be, on the ground that systematic education of a high type and suited to the wants of the present age can be given by the higher schools and the universities alone, not by the professional boards, and that the interference of the latter, except under very strict limitations, is as bad in principle, as it would be to hand over the general elementary education of the country to the trades' unions, representing the several departments of industry. Any country taking such a course cannot keep pace with the progress of the age. In the peculiar position of the Protestant minority in this province, there are, of course, special reasons why such deviations from sound educational principles become unjust as well as inexpedient.

I may add that this is not a matter of pecuniary interest to the university, which derives no revenue from the faculty of law. The faculty has had but one endowment, "The Gale Chair," founded by the liberality of the daughter of a late eminent judge. The university contributes only a small sum towards its annual expenses, and even this after some difficulty. Still the work is so important that we are willing to continue it, in hope that, like other departments, it may grow in its resources, unless driven from the field by hostile legislation. We feel also that if we submit tamely to such legislation, the time may soon come when our young men will be unable to enter into the practice of the higher professions, without conforming to the educational methods of the majority, in which case they would fail to obtain that kind of training which we believe to be essential to their highest usefulness and success, and which has enabled Great Britain and the United States to take the high positions which they hold among the nations of the world. Nor need we limit this statement to ourselves. If our friends, who are so zealous to reform the Protestant schools and universities, would turn their attention to the educational system of France, and especially to the improvements which have been introduced within the last fifteen years, they might learn much to their advantage.

Since writing the above, I have seen the letter of Mr. Pagnuelo in your issue of Monday. I do not propose to reply to this communication, which relates principally to the preliminary examinations, and to points sufficiently discussed by Mr. Rexford and Mr. Heneker. It may be useful, however, to point out some errors connected with the subjects referred to above. (1.) The degree of B.A. is not given to pupils of high schools and academies by "affiliation." They may matriculate, but they must study for three or four years before graduating in arts. This is the reason why we wish to recognize the degree of B.A. and encourage young men to proceed to it; but in doing so we have no wish to act on the majority except by our own example. (2.) Mr. Rexford's position as to philosophy is entirely mistaken. He referred to the academies and high schools, and not to the universities. We attach little importance to the philosophy which can be taught to schoolboys, but we value greatly that which can be studied by men of more mature minds. Hence again we wish to have the degree of B.A. recognized, but without prejudice to those who, without such a degree, can pass a proper entrance examination. (3.) Our objection does not lie against an equal standard of examination for all, but against the testing of our men by a standard different from and, as we hold, inferior to our own in the more essential subjects, while attaching a high value to others which we do not think necessary. (4.) It is further to be observed that the English minority in the province of Quebec has not insisted on separation, but has desired as far as possible a system of common schools. The existing separation, now fully recognized by our educational law, has been produced by the action of the majority, and as a consequence of the strictly denominational character of its system; and this renders



it peculiarly unjust to deprive us of separate examinations, which are the necessary complement of a separate and distinct system of instruction.

Those interested in the educational welfare of the English-speaking minority in this province should carefully read and ponder Mr. Pagnuelo's letter. The tone of that letter, the inability of the writer to comprehend the statements of the universities and of the Protestant committee, the dense and multiform ignorance of the nature and tendency of our Protestant educational system apparent throughout, constitute the strongest possible arguments in favour of the entire separation of the two systems, and should convince the English people of the danger of handing over our educational rights to the "generosity" of those whom Mr. Pagnuelo represents. I trust, however, that the moderate and reasonable claims of the Protestant minority, relating entirely to their own rights, and not interfering with those of others, will meet with due consideration on the part of the professional councils and the legislature, and that the dangers which at present appear to threaten educational privileges which we highly value, not in our own interest merely, but in that of the province as a whole, and of the Dominion at large, may happily be averted.

I beg to remain, yours truly,

J. WM. DAWSON.

MONTREAL, April 19th, 1887.

*To the Honourable the Legislative Assembly of the Province of Quebec, in Parliament assembled :*

The petition of the undersigned representing the McGill University, humbly sheweth :

That for many years this university has maintained in this province courses of study, based on the methods of the universities of Great Britain, not only in the Faculty of Arts, but in the Faculties of Law, Medicine and Applied Science, and that these courses of study are equal in value to those in other countries, and that their practical benefits are evidenced by the high positions taken by the graduates of the university in public and professional life.

That at the time of confederation, this university, in common with other chartered universities, possessed certain rights and privileges, the continuance of which was guaranteed to it by the Union Act, in its capacity of a Protestant university, constituted by royal charter, for the purpose of providing the higher education for Her Majesty's subjects, more especially of the Protestant minority in this province.

That by several Acts of the provincial legislature these rights and privileges have been from time to time diminished or curtailed, and it is believed that in the present session, other measures are to be introduced having this tendency.

Your petitioners would refer more especially to the following :—

Under the Bar Act of last session of the legislature, the powers of the universities, relating to matriculation or admission of students, relating to the course of study in law, and relating to the privileges possessed by graduates with reference to the term of apprenticeship, have been transferred to the council of the bar, a body of which a majority of the members are of the Roman Catholic faith, and which has already instituted regulations, not consistent with educational methods of the Protestant minority, which have been approved by long and beneficial experience in the mother country, and have been carefully adapted to the wants and circumstances of this province.

Under the Medical Act several restrictions have been placed on the examinations of the university, and it is publicly stated that a bill is now being prepared by the College of Physicians, the effect of which will be to impose an examination for entrance on the study of the profession, not suited to our system of instruction, and to subject our graduates to an examination before examiners, appointed by the College of Physicians, in a manner not in force before confederation.

That your petitioners, believing that such enactments are, and will be, hurtful to the professional and educational interests of the Protestant minority of this province, and are also in violation of the guarantees given at confederation, humbly pray that they may be repealed, and that similar legislation be not entertained in future.

Your petitioners would further represent that, since in the province of Quebec the system of Protestant education, administered by the Protestant committee of the Council of Public Instruction, is essentially distinct in its methods and aims, from that of the majority, since farther the primary education of the universities and normal school, and the secondary education of the academies and high schools, are entirely separate and distinct, and were so before confederation, these facts should be acknowledged as guaranteed to the Protestant minority, and that their rights in such respects should not be diminished, or alterations permitted, without the consent of the Protestant committee of the Council of Public Instruction.

Your petitioners would therefore claim,

That it is just and expedient, and necessary to the due maintenance of Protestant education as guaranteed by the Union Act, that in the case of Protestant candidates for examination for entrance into professional studies, the courses of study prescribed by the Protestant committee of the Council of Public Instruction, for the highest grade of the academies, and those of the Protestant universities for matriculation, should be fully recognized as valid and sufficient.

That in the case of those who have taken the degree in Arts of the universities, this degree should be recognized as qualifying to enter on professional study without further examination. In all other countries possessing universities, this privilege is given, and it is obviously expedient, as inducing candidates to pursue a thorough and liberal education. It is also submitted in this connection that the course of study in Arts in the Protestant universities is in every respect adequate, and is equal to that given in other countries, and to which such privileges are there granted.

That with reference to the entrance on professional practice, the Protestant universities have a right to claim: (1.) That their royal charters shall be respected, as giving them the right to determine the courses of study adequate for professional, as well as other degrees. (2.) That under the Confederation Act they can claim the continuance of all educational "rights and privileges" possessed by them before Confederation. (3.) That it is especially unjust that powers bearing on the educational rights of Protestants should be handed over to professional councils, of which a majority must be Roman Catholics, and the whole may be so.

Your petitioners would therefore humbly pray for such relief in the premises as to your honourable House may seem just and reasonable, and your petitioners, as in duty bound, will ever pray, &c.

*Lieutenant-Governor to Secretary of State.*

*(Translation.)*

POINTE À PIC, 6th July, 1887.

SIR,—In answer to your despatch of the 19th April, 1887, on the subject of the Acts passed by the legislature of the province of Quebec at its session of 1886, and of the report of the Honourable the Minister of Justice, recommending that the attention of the Lieutenant-Governor of Quebec be called to section 16 of chapter 34, intituled: "An Act respecting the Bar of the Province of Quebec," in which precedence over the other members of the bar in the province is given to the batonnier, and to section 1 of chap. 98 of the same statutes, which constitutes the Lieutenant-Governor a corporation sole, I have the honour to inform you that my government insist upon the power which the legislature of Quebec had, to have passed the said Acts.

Previous to confederation the Queen's counsel were appointed from time to time in each of the provinces by the Governor General or the Lieutenant-Governor, on the advice of the Executive Council, and I am informed that since the time of responsible government was given us, no appointments of Queen's counsel were made in any other



manner. As late back as 1872, the legislature of the province of Quebec passed an Act respecting the Queen's Counsel and that Act was never disallowed.

The only point decided by the Supreme Court, in the case of *Lenoir vs. Ritchie* (to which the Minister of Justice refers) is that the provincial Acts do not affect the Queen's counsel appointed by the Governor General; this cause does, therefore, decide the point at issue.

My government share the view of the Ontario government, which, in its despatch of the 22nd January, 1886, claim vigorously the right of appointing Queen's counsel; I take the liberty of referring you to that despatch.

In a report to his Excellency the Governor General, dated the 3rd January, 1872, the now First Minister, Sir John A. Macdonald, who was then Minister of Justice, expressed himself as follows:—

"I am of opinion that in virtue of section 92 of the British North America Act, 1867, the provincial legislatures, having the control of the administration of justice and the organization of courts, could, by statute, provide for the general conduct of affairs before the said courts, and pass such enactments with respect to the bar, to the management by solicitors of criminal cases, to the selection of such solicitors and to the right of precedence, as the legislature may see fit to do."

It is in consequence of this opinion that the Acts respecting the nomination of Queen's counsel were passed both by the provinces of Ontario and Quebec.

My government is of opinion that if the provincial legislatures can authorize the Lieutenant Governors to give precedence before the courts, as admitted by the Minister of Justice in 1872, they can *a fortiori* give precedence themselves, and this is all the legislature of Quebec did when it passed the Act respecting the *batonnier general*.

With reference to the objection made to the Act which constitutes the Lieutenant-Governor of the province a corporation sole, my government is of opinion that it is based upon an erroneous appreciation of the object of this Act, which cannot in any way affect the office of Lieutenant-Governor, in the sense meant by section 92 of British North America Act.

The Act to which objection is taken has solely for its object to create a civil *personne* in the province; and no one doubts that the local legislatures can legally constitute into civil persons, such bodies, individuals or functionaries as they see fit. It is in that way, for example, that the legislature of Quebec constituted, on different occasions, and very recently, Catholic bishops into corporations. They did not consider this legislation as an encroachment on their office. I am informed that, on the contrary, they solicited it, perfectly understanding that the question was not to regulate their office, but to give civil rights to the bishops.

For these reasons my government believes that the Acts in question should not be disallowed.

I have, &c.,

L. R. MASSON,  
*Lieutenant-Governor.*

*Lieutenant-Governor to Secretary of State.*

(Translation.)

POINTE À PIC, 7th July, 1887.

SIR,—In answer to your despatch of the 18th April, 1887, on the subject of the Act of the legislature of this province, 49-50 Vic., chap. 39, intituled: "An Act to authorize certain Corporations and Institutions to lend and invest moneys in this Province," I have the honour to inform you that my law officers are of opinion that the Minister of Justice misapprehends the object of this Act, which he recommends should be disallowed, if it is not amended in the sense he indicates.

It cannot have entered into the mind of the legislature, I am told by the law officers, to actually reduce to nothing the power of the Federal Government to create



certain corporations, in compelling them to the necessity of taking out a license from the government of Quebec.

If this law had such an effect, its disallowance would be perfectly useless, and any amendment could not render it effective, for, naturally, a company legally incorporated by the Federal Parliament could, by the law in question, be stopped in the exercise of the rights conferred on it constitutionally, and any attempt made with that view would be defeated in the courts.

Far from wishing to diminish the powers of corporations constituted by the Federal Parliament, the legislature of the province of Quebec, on the contrary, wish to facilitate their operations.

It is now established that the Federal Parliament cannot give to the corporations which it is authorized to create, any right affecting property and civil rights. This power can only be given them by the local legislatures, and such is, I am informed, the opinion expressed by the Privy Council in England in the following cases:—Gold Mine Company of the Chaudière *vs.* Desbarats, 5 L. R. C. 277; Citizens' Insurance Co. *vs.* Parsons, 7 L. R., Appeal Cases 96; Colonial Building and Investment Association and Attorney General of Quebec, 9 L. R., Appeal Cases 166.

Here are the words themselves in which the Privy Council expressed its opinion *re* Citizens' Insurance Company *vs.* Parsons: "But it by no means follows because the Dominion Parliament has alone the right to create a corporation to carry on business through the Dominion, that it alone has a right to regulate its contracts in each of the provinces."

It is, moreover, I am informed, the decision rendered *re* Colonial Building and Investment Association and Attorney General of Quebec, which led to the passage of the Act of 1886, which Act has for its object to facilitate the operations of the corporations in question. So much so, that, according to those decisions, these corporations could not, without this law, possess immovables in the province of Quebec, except by virtue of authority expressly given by an Act of the legislature, while with this same law they only have to apply to the Lieutenant-Governor to obtain a license, which holds the place of a special Act. Armed with this license, the corporation can possess immovables, and carry on all the operations mentioned in the Act in question, even those which the Federal Parliament could not authorize.

The Honourable Minister of Justice finds objection to this law only inasmuch as it affects the corporations created by the Federal Parliament. He does not mention any, with regard to those constituted by the Imperial Parliament, and my law officers find it strange that, what is not considered the usurpation of power with respect to the Imperial Parliament, is so considered with the Federal Parliament, the powers of the latter certainly not being equal, even in the eyes of the most determined partisans of the federal jurisdiction, to the powers of the Imperial Government towards the legislatures and the incorporation of companies.

In closing I take the liberty of calling your attention to an observation made to me by my law officers, and which, although not bearing on the merit of the question, has for them a certain importance under the circumstances. The Minister of Justice admits that similar laws were passed, one in Ontario in 1876, and another in Manitoba in 1877, and were not, nevertheless, disallowed. Why, do they say, should the legislature of Quebec be to-day denied a right, which was not denied the Legislatures of Ontario and Manitoba?

For all these reasons, my government regrets not to be able to comply to the wish of the Hon. the Minister of Justice in amending this law in the sense indicated, and hopes that it will be sustained.

I have, &c.,

L. R. MASSON,  
*Lieutenant-Governor.*

*Report of the Honourable the Minister of Justice upon Chapter 34, approved by His Excellency the Governor General in Council on the 23rd August, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th July, 1887.

*To His Excellency the Governor General in Council :*

Adverting to his report of March last and the Order in Council of 2nd April passed thereon, respecting an Act passed by the legislature of the province of Quebec in the session held in the year 1886, chaptered 34, and intituled: "An Act respecting the bar of the province of Quebec," the undersigned has the honour to report that the views of your Excellency's Government in respect thereof were communicated to the Lieutenant-Governor of Quebec by a despatch bearing date the 19th April last, and that his attention being called thereto, on the 4th instant, he has, by despatch dated the 6th instant, communicated the reply of his government to the objections taken to the Act, from which it appears that they insist upon the right of the legislature of that province to give the batonnier of the province precedence over the other members of the bar.

In support of this view the opinion of Sir John A. Macdonald, expressed in his report of 3rd January, 1872, is cited, but his Honour's advisers omit to notice an important limitation contained therein, although the undersigned had called attention thereto in his report, a copy of which appears to have been transmitted to the Lieutenant-Governor, with despatch of 19th April, before referred to.

The limitation referred to was that the authority of a legislature, in legislating respecting the administration of justice, to give the right of precedence to counsel, is subject to the exercise of the royal prerogative, which is paramount, and in no way diminished by the terms of the Act of Confederation.

His Honour's advisers also assert that the only point decided on by the Supreme Court, in *Lenoir vs. Ritchie*, (to which the undersigned had referred) was that provincial Acts do not affect the Queen's counsel appointed by your Excellency, and that, therefore, that case does not decide the questions in issue.

In his report the undersigned referred to that case, as deciding that a provincial legislature has no power to authorize the Lieutenant-Governor of a province to appoint Queen's counsel, or to grant to any member of the bar a patent of precedence in the courts of the province, as the prerogative of raising practitioners in the courts of justice to a superior eminence by constituting them sergeants, &c., or by granting letters of precedence to such barristers as Her Majesty thinks proper to honour with that mark of distinction, whereby they are entitled to such rank and pre-audience, as are assigned to their respective patents, belonged in Canada to your Excellency as the representative of the crown, and not to the Lieutenant-Governors. The undersigned has again referred to the case, and sees no reason in any way to modify his statement of what was thereby decided.

The undersigned, while adhering to the views which he has expressed in this matter, is of opinion, however, that no serious inconvenience can arise from leaving this Act to its operation, and the members of the bar affected thereby to the assertion of their rights in the usual way before the courts, while some considerable inconvenience might result from a disallowance of the Act, in view of many of its other provisions.

Since his previous reports on the subject of this Act, a communication has been received from the Chancellor of McGill University and others, asking, among other things, that the Act be disallowed, on the ground that it discriminates against the Protestant universities and schools of Quebec, in respect to the admission of students to the study of law. The papers, however, show that the present general council of the bar consists of seven Roman Catholics and four Protestants, while the proportion according to population would be six to one.

There can, the undersigned thinks, be no doubt that the Act in respect of the provisions thereof to which this objection is directed, is within the legislative authority



of the legislature of the province of Quebec, and there is no good reason, the undersigned thinks, to apprehend that the legislature of Quebec will deal illiberally by the Protestant minority of that province.

The Chancellor of McGill University, in the communication referred to, states that in case the Act cannot be disallowed, they beg leave to enter an appeal to your Excellency in Council under (the undersigned assumes the 3rd paragraph of the 93rd section of) the Union Act.

The undersigned, therefore, respectfully recommends:—

1. That the Act be left to its operation, and that the substance of this report be communicated to the Lieutenant-Governor of Quebec.

2. That the Chancellor of McGill University be informed that it has not been deemed expedient to disallow the Act, but that if the application which the university proposes to make to the legislature of Quebec at its next session for relief is not entertained, and a petition by way of appeal is made to your Excellency in Council under the 3rd clause of the 93rd section of the British North America Act, your Excellency in Council will carefully consider the question of your jurisdiction and that of Parliament in the premises, and the merits of the case as presented by such petition.

All of which is respectfully submitted.

JOHN S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice upon Chapter 98, approved by His Excellency the Governor General in Council on the 19th July, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th July, 1887.

*To His Excellency the Governor General in Council:*

With further reference to the subject of the Act passed by the legislature of the province of Quebec, in the session held in the year 1886, chaptered 98, and intituled: "An Act respecting the Executive Power," mentioned in a report from the undersigned, of March last, and in the Order in Council of the 2nd April last, the undersigned has the honour to report,—

1. That no reply having been received from the Lieutenant-Governor of Quebec to the despatch of the 19th April last, based upon the Order in Council referred to, the undersigned, on the 4th inst, moved the Secretary of State to ask by telegraph for a reply.

From the despatch of the Lieutenant-Governor of the 6th instant, received on the 9th, in which is contained the reply of his Honour's government to the objection taken to the Act under consideration, it appears that the latter are of the opinion that the views of your Excellency's Government are based upon an erroneous appreciation of the object of the Act, which it is alleged does not affect the office of Lieutenant-Governor, in the sense of the 92nd section of the British North America Act.

The office of Lieutenant-Governor is one of the incidents of the constitution, and the authority to legislate in respect thereof, is excepted from the powers conferred upon the legislatures of the provinces, and is exclusively vested in the Parliament of Canada.

In the opinion of the undersigned, it is immaterial whether a legislature by an Act seeks to add, or take from the rights, powers and authorities which, by virtue of his office, a Lieutenant-Governor exercises, in either case it is legislation respecting his office.

Therefore, the undersigned referring to his previous report and the Order in Council and despatches herein mentioned, respectfully recommends that the Act referred to, which was received by the Secretary of State on the 20th day of July, 1886, be disallowed.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

[*Proclamation disallowing the above mentioned Act, Chap. 98, published in the Canada Gazette on the 30th day of July, 1887, Vol. XXI., No. 5, page 25.*]



*Report of the Honourable the Minister of Justice upon Chapter 39, approved by His Excellency the Governor General in Council on the 9th August, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th July, 1887.

*To His Excellency the Governor General in Council :*

Adverting to his former report dated in March, 1887, on the legislation of the province of Quebec for the session of 1886, and more particularly to the observations therein, on the Act of that legislature, 49-50 Vic., chap. 39, intituled : "An Act to authorize certain corporations and individuals to loan and invest moneys in this Province," the undersigned has now to call the attention of your Excellency to the despatch of his Honour the Lieutenant-Governor of Quebec dated the 7th of July inst., in which his Honour states the views of his law advisers on that Act.

The undersigned is unable to acquiesce in the reasons by which, in his Honour's despatch, it is sought to sustain the validity of the Act in question.

His Honour states : "It is now established that the Federal Parliament cannot 'give the corporations which it is authorized to create, any right affecting property and 'civil rights. This power can only be given them by the local legislatures, and such is, 'I am informed, the opinion expressed by the Privy Council in England in the following 'cases : Gold Mine Company of the Chaudière *vs.* Desbarats, 5 L. R. P. C. 277 ; Citizens' 'Insurance Co. *vs.* Parsons, 7 L. R., Appeal Cases 96 ; Colonial Building and Invest- 'ment Association and Attorney General of Quebec, 9 L. R. Appeal Cases 166."

The undersigned has to say in regard to this proposition, that the right of the Dominion Parliament to establish a corporation, having powers and civil rights in more than one province, has been most conclusively established.

The power of the provincial legislatures, in regard to the establishment of corporations, is limited by section 92 of the British North America Act, to "the incorporation of companies with provincial objects" (subsection 11) and matters of a merely local and private nature in the province," (subsection 16) while the powers of the Dominion Parliament extend (by sec. 91) to all matters coming not within the classes of subjects assigned exclusively to the legislatures."

It follows, therefore, that a statute relating to the incorporation of a company, which would be beyond the competency of the provincial legislature, is within the competency of Parliament.

Among the numerous decisions of the Judicial Committee of the Privy Council, and of other tribunals sustaining this position, some of the judgments cited in his Honour's despatch put the point beyond a doubt.

The right of a corporation, so created by the federal authority, to hold lands, or to make contracts in the several provinces in which it is established as a civil person, may be dependent on the general law of each province as to corporations, but cannot, in the opinion of the undersigned, be restricted by any provincial legislation aimed at corporations established by the Federal Parliament.

In the case of the Citizens' Insurance Company of Canada *vs.* Parsons (L. R. 7. Appeal Cases 96) Sir Montague Smith, in giving the decision of the Judicial Committee of the Privy Council, refers, at page 116, to a passage in the judgment (not approved) of one of the learned judges of the Supreme Court of Canada, thus :—"The learned judge assumes that the power of the Dominion Parliament to incorporate companies to carry on business in the Dominion, is derived from one of the enumerated classes of subjects, viz., 'the regulation of trade and commerce,' and then argues that if the authority to incorporate companies is given by this clause, the exclusive power of regulating them must be given by it, so that the denial of the one power involves the denial of the other. But, in the first place, it is not necessary to rest the authority of the Dominion Parliament to incorporate companies on this specific and enumerated power. The authority would belong to it by its general power over all matters not coming within the classes of subjects, assigned exclusively to the legislatures of the

provinces, and the only subject on this head assigned to the provincial legislature being 'the incorporation of companies with provincial objects,' it follows that the incorporation of companies other than provincial, falls within the general powers of the Parliament of Canada. But it by no means follows, because the Dominion Parliament has alone the right to create a corporation to carry on business throughout the Dominion, that it alone has the right to regulate its contracts in each of the provinces.

"Suppose the Dominion Parliament were to incorporate a company, with power, among other things to purchase and hold lands throughout Canada in mortmain, it could scarcely be contended, if such a company were to carry on business in a province where a law against mortmain prevailed (each province having exclusive legislative power over 'property and civil rights in the province') that it could hold land in that province in contravention of the provincial legislature; and, if a company were incorporated for the sole purpose of purchasing and holding land in the Dominion, it might happen that it could do no business in any part of it, by reason of all the provinces having passed Mortmain Acts, though the corporation would still exist, and preserve its status as a corporate body."

In the case of the Colonial Building and Investment Association *vs.* the Attorney General of Quebec (9 L. R., Appeal Cases 157) Sir Montague Smith, again giving the judgment of the Judicial Committee of the Privy Council, states (page 164): "Their Lordships cannot doubt that the majority of the court was right in refusing to hold that the association was not lawfully incorporated. Although the observations of this board in the *Citizens' Insurance Company of Canada vs. Parsons*, referred to by the Chief Justice, put a hypothetical case by way of illustration only, and cannot be regarded as a decision on the case then supposed, their Lordships adhere to the view then entertained by them as to the respective powers of the Dominion and Provincial legislatures, in regard to the incorporation of companies.

"It is asserted in the petition, and argued in the courts below, and at this bar, that, inasmuch as the association had confined its operations to the province of Quebec, and its business had been of a local and private nature, it followed that its objects were local and provincial, and, consequently, that its incorporation belonged exclusively to the provincial legislature. But surely the fact that the association has hitherto thought fit to confine the exercise of its powers to one province, cannot affect its status or capacity as a corporation, if the Act incorporating the association was originally within the legislative power of the Dominion Parliament.

"The company was incorporated with powers to carry on its business, consisting of various kinds, throughout the Dominion.

"The Parliament of Canada could alone constitute a corporation with those powers, and the fact that the exercise of them had not been co-extensive with the grant, cannot operate to repeal the Act of incorporation, nor warrant the judgment prayed for, viz., that the company be declared to be illegally constituted. \* \* \*

There remains the question, which was mainly argued at the bar, whether the judgment of the Court of Queen's Bench, which, shortly stated, declares that the association has no right to act as a corporation, in respect of its most important operations within the province of Quebec, and prohibiting it from so acting within the province, can be sustained.

"It was not disputed by the counsel for the Attorney General, that, on the assumption that the corporation was duly constituted, the prohibition was too wide, and embraced some matters which might be lawfully done in the province, but it was urged that the operations of the company contravened the provincial law, at the least, in two respects, viz., in dealing in land, and acting in contravention of the Building Acts of the province.

"It may be granted that, by the law of Quebec, corporations cannot acquire or hold lands without the assent of the crown.

"This law was recognized by this board, and held to apply to foreign corporations in the case of the Chaudière Gold Mining Company *vs.* Desbarats. It may also be assumed, for the purpose of this appeal, that the power to repeal or modify this law falls within No. 13 of section 92 of the British North America Act, viz., 'property



and civil rights within the province,' and belongs exclusively to the provincial legislature; so that the Dominion Government could not confer powers on the company to override it. But the powers found in the Act of incorporation are not necessarily inconsistent with the provincial law of mortmain, which does not absolutely prohibit corporations from acquiring or holding lands, and only requires, as a condition of their doing so, that they should have the consent of the crown.

"If that consent be obtained, a corporation does not infringe the provincial law of mortmain, by acquiring and holding lands.

"What the Act of incorporation has done is to create a legal and artificial person, with capacity to carry on certain kinds of business which are confined within a defined area, viz., throughout the Dominion; among other things, it has given to the association power to deal in land and buildings, but the capacity so given only enables it to acquire and own land in any province consistently with the laws of that province relating to the acquisition and tenure of land. If the company can so acquire and hold it, the Act of incorporation gives it capacity to do so."

In the case of *Dobie vs. Temporalities Board* (L. R. 7. Appeal Cases 136) it was held *inter alia* that a statute of the province of Canada, which had created a corporation for the two provinces (afterwards united), Ontario and Quebec, could not, after confederation, be repealed or amended by the two provincial legislatures, or either of them, but only by the Parliament of Canada. Lord Watson in giving the judgment of the judicial committee, based it on the ground that neither of the provincial legislatures could have passed an Act granting the corporation power to hold lands in more than one province.

The Act of the province of Quebec now under consideration assumes the contrary of the proposition which has been fully established.

It is based on the erroneous contention that a corporation established by the Parliament of Canada, or under the laws of Great Britain and Ireland, for the purpose of lending and investing moneys in Quebec and other provinces, cannot enter upon any of the business which it has thus been empowered to transact, without the assent of the provincial authority, and it establishes the provincial secretary as the competent authority to license such a corporation to carry on business within the province of Quebec.

Even assuming that such a corporation cannot be empowered to hold lands in the province of Quebec in contravention of the provincial legislation, which prevents any and all corporations from holding lands without the license of the crown (as has been hinted by one of the passages above quoted, although not yet judicially decided), it is to be observed that the companies affected by the Quebec statute in question, are not alone those which may be incorporated for the sole purpose of holding lands, but are all corporations established for the purpose of lending and investing moneys, on movable or on immovable property, or on personal security only.

The undersigned would recommend the disallowance of the statute; were it not for one view which has not been presented in the despatch of his Honour the Lieutenant-Governor. While it gives authority to the provincial secretary to issue the license to the companies referred to, and professes to convey authority to any such company to do business after obtaining such a license, it does not contain any negative provision forbidding any such company to do business without obtaining such license, nor does it establish any penalties to be enforced against the companies so incorporated and engaging in business without obtaining the license.

The Act therefore seems incapable of doing harm, or of obstructing the operations of companies duly authorized, and doing business within the scope of their lawful authority, excepting in so far as it may raise doubts as to the necessity for such a license.

The companies affected may therefore be left to test, as they may think proper, the validity of the Act, before the courts, and no such inconvenience is likely to arise as would call for the exercise of the power of disallowance.

On the 15th January, 1878, the then Minister of Justice concurred in a report of his deputy on a similar statute passed by the legislature of Manitoba, and the report



was adopted by a committee of the Privy Council, by order dated the 19th of February, 1878. That report contains the following observation: "The right of a "provincial legislature to provide for the granting of a license by the province to a company "incorporated by the Parliament of Canada, and which by its Act of incorporation "could be given the right to do business in the various provinces, is at least "doubtful, but inasmuch as similar legislation has been allowed to go into operation in "the province of Ontario (see chap. 27 of 39 Vic., 1875-76, Ontario) I do not recom- "mend any interference with this Act; I recommend, however, that the attention of "the Lieutenant-Governor be called to these remarks."

His Honour's despatch intimates that his Honour's law officers find it strange that what was not considered a usurpation of power with regard to the imperial parliament, was so considered with regard to the federal parliament. The undersigned is unable to discover anything in his former report or in the despatch based thereon, which led his Honour's law officers to suppose that the statute in question was deemed to be within the power of the provincial legislature, as regards companies incorporated by the Canadian Parliament.

It was deemed sufficient by the undersigned, in making his report in March last, to state what appeared to be the plainest objection to the Act, and the one which it seemed most obviously the duty of your Excellency to notice, as the guardian of the federal authority in Canada, but as the position of companies incorporated under the laws of Great Britain and Ireland is thus adverted to, the undersigned may express his opinion as to the validity and effect of the Quebec statute on the question thus: A company incorporated by a statute of the United Kingdom and engaged, under and within the powers conferred by such statute, in business within the province of Quebec, or elsewhere within the empire, requires no license from the provincial authorities or any other, and it is undoubtedly within the powers of the Parliament of the United Kingdom to confer upon a company any power and rights which it may please to convey, whether the power of holding lands and the right of making contracts, or otherwise.

His Honour's despatch states that similar statutes were passed, one in Ontario in 1876, and another in Manitoba in 1877, and were not disallowed, and inquires why the right which was not denied those provinces should be denied the legislature of Quebec.

The statute of Ontario was allowed to go into operation without comment. The statute of Manitoba was commented on unfavourably, in the passage cited from the report of the then Deputy Minister of Justice, and the statute of Quebec might fairly have been disallowed, notwithstanding that the power of disallowance had not been exercised with regard to such cases, in view of the fact that, before the time of disallowance had expired, the attention of his Honour the Lieutenant-Governor of Quebec was called to the objections which existed to such enactments and his Honour's advisers were invited in due time to obtain the repeal of the statute.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## QUEBEC—50TH VICTORIA, 1887.

1ST SESSION, 6TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th June, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st June, 1888.

*To His Excellency the Administrator in Council :*

The undersigned has the honour to report upon the Acts of the legislature of the province of Quebec, passed in the session of 1887, and to recommend that all of the Acts (chapters 1 to 80, inclusive) be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## QUEBEC—51-52 VICTORIA, 1888.

2ND SESSION, 6TH LEGISLATURE.

*Attorney General of Quebec to the Minister of Justice.*

QUEBEC, 14th July, 1888.

SIR,—I have the honour to transmit you a copy of a bill, passed by the legislature of Quebec at its last session, (51-52 Victoria, chapter 20) and intituled : “ An Act to amend the law respecting District Magistrates.” Also a copy of the votes and proceedings of the legislative assembly of the 12th June last, containing a resolution in reference to the said Act, to which I beg to call your special attention

I have, &c.,

ARTHUR TURCOTTE,  
*Attorney General.*

*Extracts from Votes and Proceedings of Legislative Assembly of Quebec.*

Hon. Mr. Turcotte moved that the House do resolve itself into committee of the whole on Bill (No. 12) respecting the appointment of two magistrates to deal with matters brought before the circuit court in the district of Montreal, which was adopted on division.

The said bill was then considered in committee and reported.

And the question that the said bill be now read a third time being put.

Mr. Déchène (L'Islet) moved in amendment: That the following words be added to the main motion: "But in consenting to the third reading, this House desires to declare that this law has become necessary through the neglect of the federal authorities to appoint the judges authorized by this legislature, and that the expenses which the establishment of this court will create should be claimed from the Dominion Government."

And a debate arising.

Mr. David moved as a sub-amendment that the following words be added to the amendment: "And the new district magistrates shall only be appointed one month after this act shall be sanctioned, in order to allow the federal government to appoint the two additional judges whose appointment has been authorized, and if such appointment is made before the expiration of one month from such sanction then the proclamation putting the act into force shall not be issued."

And a debate arising.

The question being put on the sub-amendment it was carried on the following division:—Yeas, 29; nays, 15.

The said bill was then read a third time and passed.

Certified.

F. G. MARCHAND,

*Speaker.*

*Attorney General of Quebec to the Hon. the Minister of Justice.*

QUEBEC, 1st September, 1888.

SIR,—In reply to your telegram of yesterday, I beg to transmit herewith a copy of my letter of the 14th July last, which was mailed on the same day.

The Act therein referred to provides for the abolition of the circuit court at Montreal, for the creation of a district magistrates' court instead thereof, and for the appointment of district magistrates to hold that court.

The resolution adopted by the legislative assembly, on 12th June last, is to the effect that the new district magistrates were only to be appointed one month after the sanction of the above Act, in order to allow the federal government to appoint the two additional judges whose appointment had been authorized.

In absence of a reply to my letter of the 14th July, the government of Quebec has yesterday ordered the putting into force of the Act above alluded to, and appointed the two magistrates as provided by said Act.

I have, &c.,

ARTHUR TURCOTTE,

*Attorney General.*



*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th September, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd September, 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honor to report that the Lieutenant-Governor of the province of Quebec transmitted to the Secretary of State for Canada, on the seventh day of August last, certified copies of the Acts of the legislature of the province of Quebec, which had been assented to by him on the twelfth day of July last.

On the eighth day of August these copies were received by the Secretary of State and referred to the undersigned for report.

Among these Acts is one to which it would seem that early consideration should be given, viz., that marked "Assembly Bill No. 12" and intituled "An Act to amend the law respecting District Magistrates."

The undersigned would call attention to section 96 of the British North America Act, which provides that "the Governor General shall appoint the judges of the superior, district and county courts in each province," and section 99 of the said Act, which provides that "the judges of the superior courts shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and the House of Commons," and to section 100 of the same Act, which enacts that "the salaries, allowances and pensions of the judges of the superior, district and county courts shall be fixed and provided by the Parliament of Canada."

The Act of the legislature of the province before referred to, professes to enable the Lieutenant-Governor of the province, by proclamation, to abolish the circuit court sitting in the district of Montreal (the circuit court being a court now presided over by the judges of the superior court of the province of Quebec) and to establish in that city, for the said district, a special court of record under the name of the district magistrates' court of Montreal. It provides (section 2) that the court shall be composed of two justices called district magistrates of Montreal who shall be advocates of ten years' practice, be chosen from among the members of the bar of the province, and be appointed under the great seal of the province by the Lieutenant-Governor in Council. It contains other provisions as to the qualifications of the judges newly to be created, and provides (section 4) that they shall hold office during good behaviour, but may be removed from office only upon the joint address of the legislative council and legislative assembly; also, by section 5 it enacts that the salaries of these judges are to be paid out of the Consolidated Revenue Fund of the province, and, by sections 6 and 8, that "all the powers now possessed by the judges of the superior court and the duties imposed on them respecting the affairs, proceedings, matters and things within the jurisdiction of the circuit court sitting in the district of Montreal are hereby conferred and imposed upon the district magistrates of Montreal," and that "the jurisdiction of the said court is the same, *mutatis mutandis*, for hearing and deciding civil matters, as that exercised under the law of the said circuit court of the district of Montreal."

The undersigned is of opinion that the provisions of the Act which profess to confer upon the Lieutenant-Governor in Council the power to appoint these judges, the provisions also which relate to their tenure of office, their qualifications for office, and their mode of removal from office, are clearly in excess of the powers conferred on the provincial legislature by the British North America Act, and clear invasions of the powers conferred by the British North America Act on the Parliament of Canada, and on your Excellency, and as any delay in disallowing the statute of Quebec in question, may lead to confusion and private injury in the administration of justice, he recommends that the same be now disallowed.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*His Honour the Lieutenant-Governor of Quebec to the Hon. the Secretary of State.*

QUEBEC, 2nd October, 1888.

SIR,—I have the honour to inclose to you copy of an Order in Council passed this day, on the subject of the disallowance of the Act to amend the law respecting district magistrates, and with reference to the issuing of the proclamation required by sections 56 and 90 of the British North America Act, giving notice of such disallowance.

I have, &c.,

A. R. ANGERS,  
*Lieutenant-Governor.*

*Copy of Report approved by His Honour the Lieutenant-Governor of Quebec in Council on the 2nd October, 1888.*

Report on the subject of the disallowance of the act to amend the law respecting district magistrates, and with reference to the issuing of the proclamations required by sections 56 and 90 of the British North America Act, 1867, giving notice of such disallowance and the date thereof, and asking for the transmission of the whole to the Honourable the Secretary of State, Ottawa.

The Honourable the First Minister, in a report dated 1st October instant, represents that on the 12th September last his Honour the Lieutenant-Governor received from the Dominion authorities a despatch, worded as follows:—

“DEPARTMENT OF THE SECRETARY OF STATE, OTTAWA, 11th September, 1888.

“SIR,—I have the honour to inform you for the information of your government, that the Governor General in Council has examined the Act passed by the legislature of the province of Quebec at its last session, marked ‘Assembly Bill No. 12,’ entitled ‘An Act to amend the law respecting district magistrates,’ and that his Excellency has been advised to disallow the said Act.

“I inclose to you the order of the Governor General disallowing the above mentioned Act, together with his Excellency’s certificate as to the date of the said Act.

“I also inclose copies of the Order in Council and of the report of the Honourable the Minister of Justice upon the subject.

“I have, &c.,

G. POWELL,  
“*Under Secretary of State.*

That the said despatch was accompanied by a copy of the report of the Honourable the Minister of Justice, giving reasons for such disallowance in the following terms:—

“The undersigned is of opinion that the provisions of the Act which profess to confer upon the Lieutenant-Governor in Council the power to appoint these judges, the provisions also which relate to their term of office, their qualifications for office and their mode of removal from office, are clearly in excess of the powers conferred on the provincial legislatures by the British North America Act, and clear invasions of the powers conferred by the British North America Act.”

That the reasons for the disallowance are, therefore, that the Quebec legislature has no power to authorize the Lieutenant-Governor in Council to appoint district magistrates, or to enact that they will remain in office during good behaviour, and shall not be removed from office, except upon the joint address of the legislative council and the legislative assembly.

That the Act disallowed is chapter 20, of 51–52 Victoria, which reads as follows:—  
Act to amend the law respecting district magistrates.

Whereas, in the judicial district of Montreal, the number of cases in civil matters before the superior court and the circuit court is so great that, notwithstanding



ing the permanence of the sittings of such courts, the judges presiding therein are unable to hear and decide them all, with the despatch that would be suitable to the parties interested.

Whereas, to remedy this state of things, and in the interest of the administration of justice, it has become necessary, so as to permit of the judges of the superior court attending exclusively to the affairs which are immediately connected with that court, to abolish the holding of the circuit court in the district of Montreal and to establish there a district magistrates' court, before which all the cases, proceedings, matters and things which are now within the jurisdiction of such circuit court, may be brought.

Therefore, Her Majesty, by and with the advice and consent of the legislature of the province of Quebec, enacts as follows:—

1. The Lieutenant-Governor in Council, may by proclamation abolish the circuit court sitting in the district of Montreal, and establish in the city of Montreal, in the said district, a special court of record under the name of 'district magistrates' court of Montreal.'

2. Such court shall be composed of two justices called 'district magistrates of Montreal,' who shall be advocates of ten years' practice, be chosen from among the members of the bar of the province, and be appointed under the great seal by the Lieutenant-Governor in Council.

3. It is not necessary to be appointed as magistrate to have property qualification, but so long as he occupies such office, no magistrate can be a senator or member of the House of Commons and of the executive council, legislative council or legislative assembly of the province, or fill any other office under the crown.

4. Such magistrates shall hold office during good behaviour, but they cannot be removed from office except upon the joint address of the legislative council and the legislative assembly.

5. The salaries and emoluments of such two magistrates shall be three thousand dollars each, payable out of the Consolidated Revenue Fund.

6. All the powers now possessed by the judges of the superior court, and the duties imposed upon them respecting the affairs, proceedings, matters and things within the jurisdiction of the court sitting in the district of Montreal, are hereby conferred and imposed upon the district magistrates of Montreal.

7. One of these magistrates shall preside over the court alone, but they may both sit at the same time in different rooms and exercise all the powers of the court.

8. The jurisdiction of the said court is the same, *mutatis mutandis*, for the hearing and deciding civil matters as that exercised under the law, by the said circuit court of the district of Montreal.

9. Until otherwise decided by the Lieutenant-Governor in Council, the place of the sittings of the new court, the offices of the officers and the rooms necessary for the deposit of the archives shall remain the same as those now occupied for the same purposes by the circuit court of the judicial district of Montreal.

10. The present officers and employees of the circuit court shall, without new appointment, be the officers of the new court.

11. Upon the death or removal of such officers, their successors shall be called officers of the magistrates court of the district of Montreal.

12. The bailiffs of the superior court are at the same time bailiffs of the district court thereby established, and are subject to its orders.

13. At the time of the coming into force of this Act, any case or proceedings commenced and pending before the circuit court of the district of Montreal, shall be continued, heard and decided by the judges of the superior court as if this Act had not been passed, but the execution and all other proceedings after the final judgment, fall within the jurisdiction of the new court and of the justices thereof.

14. The records, archives, plunitifs, books and papers of the circuit court of the district of Montreal when abolished, shall, until otherwise decided by the Lieuten-



ant-Governor in Council, remain in the places where they are now deposited and kept, as belonging to the district magistrates' court of Montreal, under the exclusive control of such court and of the justices thereof.

15. All provisions of the Code of Civil Procedure and other provisions respecting the circuit court of the said district are, *mutatis mutandis*, applicable to the magistrates court hereby established and to the justices presiding over such court.

16. The words 'circuit court of the district of Montreal,' 'circuit court of Montreal' or simply 'court' or 'circuit court' whenever referring to the circuit court sitting in the district of Montreal, whenever found in the Code of Civil Procedure or in any other law, shall mean and include the 'district magistrates' court of Montreal.'

2. The words 'judges of the superior court,' 'judge' or 'judges' whenever referring to their powers and duties respecting the affairs, matters and things connected with the circuit court sitting in the district of Montreal, shall mean the district magistrates of Montreal.

3. The words 'clerk of the circuit court' or 'clerk' and the words designating any other officer or employee whenever referring to the circuit court sitting in the district of Montreal, shall mean the clerk or other officer or employee of the district magistrates' court of Montreal.

17. This Act shall be considered as forming part of the law respecting district magistrates, and the provisions thereof shall apply to this action so far as compatible.

That the law respecting district magistrates in the province of Quebec in force before the 12th July, 1888, was the Act 32 Vic., chap. 23, intituled "An Act respecting district magistrates in this province," assented to 5th April, 1869, and amended by several other Acts of the legislature, and among others by the following:—

1. 33 Vic., cap. 11, assented to 1st February, 1870.
2. 35 Vic., cap. 9, assented to 23rd December, 1871.
3. 37 Vic., cap. 8, assented to 28th January, 1874.
4. 39 Vic., cap. 31, assented to 24th December, 1875.
5. 40 Vic., cap. 12, assented to 28th December, 1876.
6. 41-42 Vic., cap. 8, assented to 20th July, 1878.
7. 48 Vic., cap. 15, assented to 9th May, 1885.

That the first section of the Act of 1869, authorizing the appointment of district magistrates in this province, reads as follows:—

"The Lieutenant-Governor in Council may from time to time appoint by commission under the great seal, one or more persons who shall be advocates of at least five years' standing, and shall thereupon cease practising, as a district magistrate or district magistrates, within any one or more districts in this province;" and that other provisions of the same Act confer upon the said district magistrates a comparatively extensive criminal jurisdiction.

That section 13 of the same Act reads as follows:—

"The Lieutenant-Governor in Council, whenever he thinks proper, may, by proclamation, establish in and for any county in this province, a court, to be called the magistrates' court for the county of (naming the county), which court shall be held by the district magistrates within whose jurisdiction such county is situate, and may also by proclamation fix or alter, from time to time, the days on which such courts shall be held in any county."

That section 16 of the same Act gives civil jurisdiction to the magistrates' court and empowers them to hear, try and determine:—

"1. All suits purely personal or relating to movable property, which arise from contracts or quasi contracts, and wherein the sum or value demanded does not exceed twenty-five dollars, and all suits for the recovery of tithes or arrears thereof.

"2. All suits for the recovery of school taxes, assessments or contributions, or of rates, taxes, assessments, penalties, damages or sums of money whatever, due or payable in virtue of the Lower Canada Municipal Act, or any Acts amending the same, or under the Act respecting abuses prejudicial to agriculture or any Acts amending the same, or

in virtue of any special Act incorporating any city or town municipality, or of any Act amending the same, or in virtue of any by-laws or regulations made under the authority of such Acts.

"3. All suits for the recovery of all penalties incurred, of sums due or payable to the treasury of the province, under either of the chapters six, seven or eight of the Consolidated Statutes for Lower Canada, as amended by the Act of the present session, intituled 'An Act to amend the law respecting Tavern Keepers, Hawkers, Pedlars and Billiard Tables,' or sums due for licenses under the statutes of this province, thirty-first Victoria, chapter three, or any other law.

"Provided, however, that in all such suits, the defendant resides within the county for which the court is held, or that the debt was contracted therein, and the defendant resides within the district."

That sections 23, 24, 25 and 26 authorize the Lieutenant-Governor in Council to establish additional magistrates' courts in the county of Saguenay, with jurisdiction extending up to \$200.

That the said Act (section 5) authorizes the Lieutenant-Governor in Council to pay to these district magistrates out of the Consolidated Revenue Fund an annual salary not exceeding twelve hundred dollars.

That by the Act of 1871 the civil jurisdiction of the magistrates' court has been increased from twenty-five to fifty dollars, that of the additional courts for the county of Saguenay being left at two hundred dollars, and power was granted to them to execute by seizure and sale of immovables, by a writ addressed to the sheriff of the district and returnable to the superior court of such district, any judgment rendered for sums exceeding forty dollars.

That by the Act of 1874, section 13 of the Act of 1869 and section 3 of the Act of 1871 are repealed, and the following substituted therefor:—

"1. The Lieutenant-Governor in Council, whenever he thinks proper, may by proclamation establish in and for any county, city or town in this province one or more magistrates' courts, to be designated according to the respective counties, cities or towns wherein the same may be established."

That by clause 7 of the said Act of 1874 the provisions of the Code of Civil Procedure, relating to the circuit court, shall apply to every magistrates' court, and to the district magistrates holding the same, the above provisions conferred upon the magistrates the right to preside at the same time in the same building but in different rooms, several divisions of the said court, as well as all the powers of the judges of the superior court, within the limits of the jurisdiction of such magistrates' court.

That by section 11 of the said Act of 1874 it is enacted that no district magistrate already appointed, or who may hereafter be appointed, shall be removed or dismissed from his office by the Lieutenant-Governor in Council, unless the reasons or grounds for his being so removed or dismissed, be stated in the Order in Council authorizing such removal or dismissal.

That by the Act of 1876 the jurisdiction of the magistrates' courts was further extended to all persons residing in the province, provided the debt was contracted in the county, city or town for which the court was held.

That by the Act of 1878 power was granted to the Governor in Council to abolish by proclamation the said magistrates' courts whenever he may deem proper.

That by the Act of 1885 a special civil jurisdiction up to ninety-nine dollars is given to the said courts, in part of the counties of Gaspé and Saguenay.

That the disallowed Act only amends all preceding Statutes respecting district magistrates and magistrates' courts, and does not grant the Lieutenant-Governor in Council any further power, the principle of which is not included in the said statutes, except, however, that which is conferred upon him respecting the abolition of the circuit court sitting for the district of Montreal, and such power is not even questioned in the Memo. of the Minister of Justice.

That the jurisdiction of the magistrates' courts, the establishment of which is authorized by the disallowed Act, is, with respect to the sums for which actions can be



instituted before it, not as considerable as for certain magistrates' courts existing under the authority of preceding statutes, for the amount of the action must be below one hundred dollars, whereas in such courts, the jurisdiction extends to two hundred dollars, and even to an unlimited amount in claims for taxes, tithes and other special causes.

That it is true that the salary of those two magistrates, whose appointment is authorized by the disallowed Act, is fixed at three thousand dollars instead of twelve hundred dollars, for magistrates appointed in districts other than Montreal, but surely the amount of the salary is not sufficient to render the Act *ultra vires*.

It is therefore evident that before the sanction of the statute in question, the Lieutenant-Governor had, and he will have, after the coming into force of the disallowance, the power to appoint district magistrates (32 Vic., c. 23, s. 1) and to establish magistrates' courts in every county, city or town in the province (37 Vic., c. 8, s. 1) with the civil jurisdiction already mentioned, and that these district magistrates may receive out of the revenue of the province, and in fact receive and will continue to receive, an annual salary not exceeding twelve hundred dollars (32 Vic., c. 23, s. 5) and consequently, in declaring the power to appoint judges *ultra vires*, the Dominion authorities deny to the executive of this province a power it possesses, and has exercised since 1869, that it possesses and exercises actually, and will continue to possess and exercise in the future, by virtue of the said laws anterior to the disallowed statute.

On the other side, the right cannot be denied to the executive of this province to give to magistrates it has the power to appoint, a more or less extensive independence, the said independence having been recognized to a certain extent by the Act 37 Vic., c. 8, above mentioned, and formally acknowledged in favour of the judges of the special sessions of the peace of Montreal and Quebec, by the Act of this legislature (47 Vic., c. 9) the said judges of the sessions of the peace are appointed and paid by the government of this province in the following terms:—

"The judges of sessions of the peace for the districts of Montreal and Quebec, now appointed, shall hold office during good behaviour, and the commissions to be hereafter granted shall contain that condition; the Lieutenant-Governor in Council may, however, remove any such judge of the sessions of the peace upon a joint address from the legislative council and legislative assembly."

That the court of appeal of this province has recognized as constitutional and *intra vires*, the appointment of those district magistrates, appointed by the Lieutenant-Governor in Council of this province, under the authority of the Act hereinbefore cited, and in two cases:—

1. The corporation of St. Gillaume *vs.* the corporation of Drummond in 1876, reported in the 7th vol. of the *Revue Légale*, page 562.

2. Regina *vs.* Horner in 1876, reported in Cartwright's cases on British North America Act, 2nd vol., page 317.

That in the first of these there was a judgment condemning Laplante to pay a sum of \$1,880 for municipal taxes, levied as a subscription towards a railroad, and that judgment has been unanimously confirmed in the court of appeal by judges Tessier, Monk, Sanborn and Ramsay.

That in the second of these cases, Regina *vs.* Horner, there was a demand to annul a judgment rendered by a district magistrate, on the ground that his appointment was illegal, and in violation of section 96 of the British North America Act, which confers on the Governor General the right to appoint judges.

That in delivering the judgment of the court which was unanimous, his Honour Judge Ramsay used the following words:—

"The Privy Council in the case of Coote (L. R. 4, P. C. 599) recognizes the general principle that the executive power is derived from the legislative power, unless there be some restraining enactment. In this case it is said there is such an enactment, and that it is section 96 of the British North America Act. This section specially reserves the nomination of the judges of the superior courts, the county and district courts, save the courts of probate in Nova Scotia and New Brunswick, to the Government of



Canada. It is quite clear that without this section, the appointment of all the judges would be in the hands of the local governments, and the sole question then is, whether a 'district magistrate' is a district judge? Some argument was attempted to be drawn from section 130, British North America Act, but that is only a transitory clause, providing for the position of those local officers who have federal duties 'until the Parliament of Canada otherwise provides.' By that section, they are created officers of Canada and declared to be subject to all the responsibilities and penalties they were subject to before the union.

"I do not then see that section 130 affects the question before the court, and we are of opinion that a 'district magistrate' is not a 'district judge' within the meaning of section 96 of the British North America Act. We are, therefore, against the petitioner in this point."

That similar laws are in force in all the provinces of the Dominion, and especially :—

1. New Brunswick, 39 Vic., cap. 5, which provides for the establishment of courts to judge civil cases, with jurisdiction up to forty dollars, before commissioners appointed by the Lieutenant-Governor in Council, such appointment of commissioners sanctioned by the supreme court of New Brunswick (I, Pugsley and Burbidge, page 324).

2. Statute of Ontario, 1877, "An Act respecting the territorial and temporary judicial districts of the Province, and the Provincial County of Haliburton." The said law gives to the stipendiary magistrates appointed and paid by the province, a very extensive jurisdiction, and has been commented upon in the following manner by the Minister of Justice, as recorded in the sessional documents of 1882, Canada, vol. 15, No. 10, document No. 141, page 41 :—(*See ante*, page 153).

"Were this the first enactment of a similar nature passed by a provincial legislature I would hesitate long before recommending that it should be left to its operation, as it appears to entrench upon the powers conferred upon the Governor General of Canada by the 96th section of the British North America Act, 1867, which section is as follows :—

"96. The Governor General shall appoint the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick."

"Inasmuch, however, as provincial legislation has been previously left to its operation, whereby certain judicial powers in civil matters have been conferred upon stipendiary magistrates, and whereby courts presided over by stipendiary magistrates, and having in effect the powers of the division courts of Ontario have been constituted, I do not feel at liberty to object to the provisions of the present Act, provided the jurisdiction professed by the former legislation upon the subject, which has been left to its operation, has not in effect been substantially extended."

3. Statute of British Columbia 49 Vic., chap. 6 (1886) enacts that stipendiary and police magistrates, appointed and paid by this province shall have, hereafter, civil jurisdiction in all actions for debts, where the amount claimed does not exceed one hundred dollars.

That it is well to remember that in 1887 the legislature of this province, on the request of the judges, lawyers and people within the jurisdiction of Montreal, authorized the appointment of two additional judges for the reasons mentioned in the preamble of the said Act, which reads as follows :—

"Whereas, under the authority of section 1, cap. 78, of the Consolidated Statutes for Lower Canada amended by the Act 49-50 Vic., cap. 7, the superior court is composed of twenty-eight judges; namely, one chief justice and twenty-seven puisne judges.

"Whereas, the present number of judges now assigned to the district of Montreal is insufficient for the despatch of business in the district, and, whereas, in the interest of the administration of justice it is necessary to have two additional judges available for the business of the circuit court in the said district; Therefore Her Majesty, &c., &c.; and that, notwithstanding that law, those two additional judges had not yet been appointed on the 12th July last, date when the Act was assented to, nor on the 30th

August last, at the time of the issuing of the proclamation, putting into force the disallowed Act, to the detriment and damage of those within the jurisdiction of the district of Montreal."

That according to the principle acknowledged by the Dominion authorities, the wish of local legislatures in similar circumstances should be respected, if credit is given to what the Right Honourable Sir J. A. Macdonald, Prime Minister of the Dominion, declared in 1880, in the House of Commons:—

"I acknowledge there is a great deal in the argument used by the honourable member for West Durham and by the honourable member who has just spoken, but, as has been said before, it is very difficult indeed for the federal parliament to decide when a wish is expressed by the legislature of any province, that it should be disregarded. The constitution, organization and maintenance of the courts are left to the provincial legislatures. The costs and responsibility for the administration of justice, excepting the salaries of the superior court judges, are thrown upon the different provinces, whose governments are responsible for their peace and good government. So that when a provincial legislature passes an Act, declaring that an additional number of judges is necessary for the due administration of justice, it is incurring a great responsibility for the federal parliament and government to say 'you do not want them, you can administer justice and keep the peace of the land without them, and, therefore, we refuse to appoint them.'

"As a general rule, I think we may safely trust to the discretion of the provincial legislatures in this regard. They have their own responsibility, and must know that in putting additional burdens on the treasury of the Dominion they are increasing the burdens of their own people." (Hansard 1880, page 118-119). And further:

"The burden of the administration of justice is thrown on the provincial legislature, and when such powers are given them, exclusively, we have no right to interfere with their powers, and it is assuming a very great responsibility for us to say 'although you declare certain judges are wanted, and have passed an Act constituting a particular court, we refuse you the means to carry that policy into effect.'" (Hansard, page 119.)

That in adopting the disallowed Act the legislative assembly passed the following resolution:—

"And the new district magistrates shall only be appointed one month after this Act shall be sanctioned, in order to allow the Federal Government to appoint the two additional judges whose appointment has been authorized, and if such appointment is made before the expiration of one month from such sanction, then the proclamation putting this Act into force shall not be issued."

That duly certified copies of the said law and of the above mentioned resolution were transmitted on the 14th July last by the Attorney General of this province to the Minister of Justice in a letter, of which the following is a copy:—

"I have the honour to transmit you a certified copy of a bill passed by the legislature of Quebec at its last session, and intituled 'An Act to amend the law respecting district magistrates,' and also a copy of the votes and proceedings of the legislative assembly of the 12th June last, containing a resolution in reference to the said Act, pages 223 and 224, to which I beg to call your special attention," and that the above letter remained unanswered up to the 29th August last, when the Attorney General sent the following letter to the Minister of Justice:—

"Will you be kind enough to forward a reply to my letter dated 14th July last, calling your attention to the appointment of district magistrates in Montreal." To which message replied two days later, viz.—the 31st August:—

"I was not in Ottawa and have not received the letter you refer to in your telegram, and can find no trace of its reception in the department. Will you be kind enough to send a duplicate of the same."

That the proclamation putting the said Act into force was issued and that the appointment of the said judges was made only on the 30th August last.

That, however, the following appears in the report of the Minister of Justice, a copy of which was transmitted to his Honour the Lieutenant-Governor of the province, together with a copy of the Order in Council recommending the disallowance.



"On the eighth day of August these copies were received by the Secretary of State and referred to the undersigned for report. Among these Acts is one to which it would seem early consideration should be given, viz.—that marked "Assembly Bill No. 12" and intituled "An Act to amend the law respecting District Magistrates."

That among the sessional papers of Canada for 1880, an Order of the Governor General in Council is found, dated 9th June, 1868, approving the memorandum of the minister, then Sir J. A. Macdonald, dated 8th June, 1868, establishing the course to be pursued in disallowing laws of provincial legislatures, of which memo. the following is an extract :—

"That on the receipt by your Excellency of the Acts passed in any province, they be referred to the Minister of Justice for report, and that he, with all convenient speed, do report as to those Acts which he considers free from objection of any kind, and if such report be approved of by your Excellency in Council, that such approval be forthwith communicated to the provincial government.

"That he make a separate report, or separate reports, on those Acts which he may consider :—

"1. As being altogether illegal or unconstitutional.

"2. As illegal or unconstitutional in part.

"3. In cases of concurrent jurisdiction as clashing with the legislation of the general parliament.

"4. As effecting the interests of the Dominion generally.

"And that in such report, or reports, he give his reasons for his opinions.

"That where a measure is considered only partially defective, or where objectionable, as being prejudicial to the general interests of the Dominion, or as clashing with its legislation, communication should be had with the provincial government with respect to such measure, and that in such case the Act should not be disallowed if the general interests permit such a course, until the local government has had an opportunity of considering and discussing the objections taken, and the local legislature has also an opportunity of remedying the defects found to exist."

That the above order of the Governor General in Council, and a copy of this memorandum were officially communicated to the Lieutenant-Governors of Ontario, Quebec, Nova Scotia and New Brunswick, for the information and instruction of their governments, and also to the imperial government by the Governor General in his despatch dated 11th March, 1869.

That the undersigned believes he is justifiable, under the circumstances, to declare that in the present case of disallowance, the above rules have not been observed.

That by section 92 of the British North America Act it is enacted that in each province the legislature may exclusively make laws respecting matters included in the undermentioned classes, namely :—

"14. The administration of justice in the province including the constitution, maintenance, organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in those courts ;" and that the Act referred to is within the limits of the powers granted by the said section 92 to provincial legislatures.

That it is allowed to repeat here the words used in the memorandum from the Attorney General for Ontario, dated 12th July, 1881, respecting the disallowance of the Act intituled "An Act for protecting the public interests in rivers, streams and creeks," which memorandum was approved by Order in Council, dated 14th October of the same year, the said words are as follows :—

"The British North America Act shows, that, while the different provinces were federally united in one Dominion, with constitutions similar in principle to the British, the respective executive and legislative powers and authorities of the provincial and Dominion governments were also defined and dealt with, as alike sovereign in their nature, within the limits of the subjects assigned to each respectively.

"The Confederation Act was intended to give practical effect to the exercise of the fullest freedom in the administration and control in local matters in each province, which was the main object of Quebec and Ontario especially in seeking such union.



This fundamental principle of local self-government runs through the whole of this constitutional Act, and in order that it may be preserved intact, the utmost vigilance on the part of every province should be constantly alive to every attempt of the central government to transfer the control of local affairs from the government having the greatest interest in them, and possessing the fullest knowledge of them, and under a direct responsibility to the people of the province, to a government which necessarily has the least knowledge of, and the smallest interest in, such matters."

That for the above reasons the government of the province of Quebec energetically protest against the disallowance of the said Act, and respectfully claim for the legislature of this province the absolute right to adopt any law deemed necessary for the good government and prosperity of the province, within the limits of its powers and attributions.

Whereas, therefore, the power of disallowing the Acts of provincial legislatures is given to the Governor General in Council by the British North America Act, and that the said disallowance would have no effect, unless a proclamation of the Lieutenant-Governor do issue.

That the refusal to issue such proclamation would render the power of disallowance illusive, and would create a state of things dangerous for the good working of the constitution of this country, and would endanger the peace and harmony which ought to exist between the different constituted authorities, and that, while specially reserving the right of the legislature of this province to enact laws whenever deemed proper on all subjects within its competence, and authorized by the constitution, the Honourable the First Minister recommends that the said disallowance be notified according to law, and that his Honour the Lieutenant-Governor be pleased to transmit copy of the present report to the Secretary of State.

Certified.

GUSTAVE GRENIER,  
*Clerk of Executive Council.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd January, 1889.*

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 18th January, 1889.

*To His Excellency the Governor General in Council :*

The undersigned has had referred to him a despatch from his Honour the Lieutenant-Governor of the province of Quebec, dated the 2nd day of October last, transmitting a copy of an Order in Council, passed on that day by his Honour's government, on the subject of the disallowance of the Act of the province of Quebec to amend the law respecting district magistrates, being chapter 20 of 51-52 Victoria.

The undersigned has the honour to make the following observations on this Order in Council :—

The disallowed Act recited that "In the judicial district of Montreal the number of cases in civil matters before the superior court" was "so great that notwithstanding the permanence of the sittings of such courts the judges presiding therein" were unable to hear and determine them all with the despatch that would be suitable to the parties interested." And that "To remedy this state of things, and in the interest of the administration of justice, it had become necessary, so as to permit of the judges of the superior court attending exclusively to the affairs more immediately connected with that court, to abolish the holding of the circuit court in the district of Montreal, and to establish there a district magistrates' court, before which all the cases, proceedings, matters and things" then "within the jurisdiction of such circuit court" might "be brought."

After these recitals the disallowed Act made the following, among other provisions :—

1. That the Lieutenant-Governor in Council might “by proclamation abolish the circuit court sitting in the district of Montreal, and establish in the city of Montreal, for the said district, a special court of record under the name of “district magistrates’ court of Montreal.”

2. That such court “should be composed of two justices called district magistrates of Montreal, who should be advocates of ten years’ practice, be chosen from among the members of the bar of the province, and be appointed under the great seal by the Lieutenant-Governor in Council.”

3. That no property qualification should be “necessary to the magistrates, but that they should be ineligible to be senators or members of the House of Commons, executive council, legislative council or legislative assembly of the province, or any other office under the crown.”

4. That such magistrates should hold office “during good behaviour,” and be irremovable “except on the joint address of the legislative council and assembly.”

5. That the magistrates should receive a salary of three thousand dollars per annum each.

6. That all the powers possessed at the time of the passing of the Act “by the judge of the superior court, and the duties imposed on them respecting the affairs, . . . . . within the jurisdiction of the circuit court sitting in the district of Montreal,” should be imposed and conferred upon the district magistrates of Montreal.

7. That the jurisdiction of the district magistrates’ court should be the same, *mutatis mutandis*, for civil matters, as that which has been exercised by the circuit court of the district of Montreal.

8. That all the provisions of the Code of Civil Procedure and other provisions respecting the circuit court, of the said district, should, *mutatis mutandis*, be applicable to the magistrates’ court thereby established.

9. That the words “circuit court of the district of Montreal,” “circuit court of Montreal,” “court” and “circuit court” whenever referring to the circuit court sitting in the district of Montreal, whenever found in the Code of Civil Procedure, or in any other law, should mean and include the district magistrates’ court of Montreal. Also, that the words “judge of the superior court,” “judge” or “judges” whenever referring to their powers and duties, respecting matters connected with the circuit court sitting in that district, should mean the district magistrates of Montreal.

This Act was disallowed on the seventh day of September, 1888, for reasons which were communicated to his Honour the Lieutenant-Governor of Quebec, the principal of which were that the provisions which professed to confer upon the Lieutenant-Governor in Council the power to appoint these judges, and which professed to regulate their tenure of office, their qualifications for office, and their mode of removal from office were in excess of the powers conferred on provincial legislatures by the British North America Act, and were an invasion of the powers conferred upon the Governor General and the Parliament of Canada by that Act.

Among other powers conferred by the British North America Act on provincial legislatures is (sec. 92, subsec. 14) the making of laws in relation to “the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.” In no other provision is any power conferred on the legislatures of the provinces, in respect of courts or judges, or the appointment and qualification of judges.

All other powers than those expressly enumerated by section 92, as conferred on the provincial legislatures, are conferred on the Parliament of Canada; and by section 96 it is expressly provided that the Governor General shall appoint the judge of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick. The royal instructions convey to your Excellency the power to appoint some inferior judicial officers.



By section 97, it is enacted that "Until the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and the procedure of the courts in those provinces are made uniform, the judges of the courts of those provinces, appointed by the Governor General, shall be selected from the respective bars in those provinces."

By section 98, "The judges of the courts of Quebec shall be selected from the bar of that province."

By section 99, "The judges of the superior courts shall hold office during good behaviour, but shall be removable by the Governor General on the address of the Senate and the House of Commons."

By section 100, "The salaries, allowances and pensions of the judges of the superior, district and county courts (except the courts of probate in Nova Scotia and New Brunswick), and of the admiralty courts, in cases where the judges thereof are, for the time being, paid by salary, shall be fixed and provided by the Parliament of Canada."

At the time of the passage of the British North America Act, and ever since, the circuit court has been a court of record in the province of Quebec, held every year in certain districts, including the district of Montreal. It had jurisdiction up to \$200. All powers vested in the superior court or the judges thereof, as to various kinds of procedure, were vested in the circuit court, and the judges by whom the same were held. As to certain proceedings, the circuit court was entrusted with concurrent jurisdiction with the superior court.

The circuit court was held by one of the judges of the superior court.

The circuit court was therefore, at the time of the union, in one sense a branch of superior court. The powers and duties of superior court judges included the powers and duties of circuit court judges. When the Governor General appointed a judge of the superior court, under section 96 of the British North America Act, the appointment carried with it an appointment as circuit court judge.

The judges of the circuit court were, therefore, among the judges, who, under section 96, were to be appointed by the Governor General. They were among the judges whose qualification was prescribed by section 98 as being, simply, membership of the bar of the province.

The circuit court judges, inasmuch as they were superior court judges, had their tenure of office prescribed by section 99. They were to hold office during good behaviour, and were to be removable by the Governor General on the joint address of the Senate and the House of Commons. They were among the judges whose salaries, under section 100, were to be fixed and provided by the Parliament of Canada.

The disallowed Act not only empowered the Lieutenant-Governor in Council, as before stated, to abolish the circuit court, but to appoint, instead of judges of the superior court, *quoad* the circuit court officers, who would be in every sense judges, in relation to matters within the jurisdiction of the circuit court, as fully as the judges of the superior court had been, although bearing the name of district magistrates.

As to judges of the circuit court, therefore, the appointing power was taken from the hands of your Excellency and transferred to the Lieutenant-Governor in Council of Quebec.

The prohibition against the new judges sitting in the Senate and House of Commons is so obviously beyond provincial powers, that it would seem impossible that the legislature of Quebec really designed, by the third section of the disallowed Act, to declare that the district magistrates should be ineligible to be senators and members of the House of Commons. It is easier to believe that the intention was that the new judges should lose their offices, if they became members of parliament, although such meaning failed to find expression.

The provisions of section 4 of the disallowed Act, in so far as the tenure of office was made to depend on good behaviour, is the same as section 99 of the British North America Act, but while section 99 of the British North America Act had the effect of making the judges of the circuit court removable by your Excellency, on the address



of the Senate and the House of Commons, section 4 of the disallowed Act declared that they could not be removed from office except on the address of the Legislative Assembly of Quebec.

Section 5 of the disallowed Act fixed the salaries and emoluments of the new judges, and made them payable out of the Consolidated Revenue Fund of Quebec, although section 100 of the British North America Act declared that those salaries and emoluments should be fixed and provided by the Parliament of Canada.

At the time of the passing of the disallowed Act, the judges appointed by your Excellency's predecessors, under section 96 of the British North America Act, were sitting in the circuit court. Section 6 of the disallowed Act professed to strip them of all their powers, relieve them of all their duties, and impose both powers and duties on the newly created magistrates, who, in the opinion of the undersigned, if the Act was valid, by necessary implication, were made judges, although called magistrates, and although appointed by the Lieutenant-Governor.

The legislature of Quebec, however, did not suffer the matter to rest upon implication, but in one of the concluding sections of the Act under consideration declared that the words "judges of the superior court," "judge" and "judges," wherever used in reference to the circuit court, should mean the district magistrates of Montreal, attempted to be created by that Act.

If such powers can be exercised by a provincial legislature, it is difficult to see what is to prevent the legislature from asserting the power to appoint judges of all the provincial courts, and regulate their qualifications for office, their salaries and their tenure of office. The change of name is so easy of accomplishment as not to present any difficulty, especially, as the device just described made the terms "judge" and "magistrates" interchangeable.

The undersigned deems it unnecessary to advert at any length, in this place, to the provisions of the disallowed Act abolishing the circuit court, as affecting its constitutionality.

Reference to that point would seem wholly unnecessary, except for the assumption indicated in the Order in Council under consideration, that every kind of provincial legislation, which has not been distinctly questioned is admitted to be correct; and but for the fact that the power to abolish is stated by the Order in Council to have been "not even questioned by the Minister of Justice." In passing, it may, therefore, be proper to say that instances may perhaps be suggested in which the power of your Excellency, and of Parliament, to remove judges might be usurped by provincial legislatures in the exercise of their authority, as to the constitution and organization of the courts. Cases may be suggested in which, in the exercise of this power, a court might be abolished for the purpose of removing one or more of the judges, and, no doubt, in such a case the control of the federal authority would be called for, and the power of disallowance would be exercised.

In the consideration of the Act which is at present the subject of discussion, it has been assumed by the undersigned, and is still assumed, that the abolition of the circuit court was not for the purpose of usurping the power of removing judges, but was done to accomplish the setting up of a new tribunal. He does not therefore deem it necessary to place undue stress on the fact that the disallowed statute had the effect of abolishing the circuit court.

It seems necessary, however, to call attention to the important misconception, which seems to prevail throughout the reasoning presented by the Order in Council of the Quebec Government, that the allowance of provincial legislation is, in all cases, an admission of the validity of such legislation, and an admission which has the effect of depriving the federal authority of the right or power of disallowing statutes similar to those which have been permitted to go into operation.

No such inference can properly be drawn. It is apparent to any person conversant with the subject that many provincial statutes which have been left to their operation contained provisions beyond the powers of the provincial legislatures, and that many others which have been left to their operation contained provisions of very doubtful validity.

The reasons for this are not difficult to find.

In the early history of confederation the provincial legislatures were naturally inclined to follow the lines of legislation which had for so many years been pursued in the parliaments of the provinces. The provisions of the British North America Act were novel. Its position had not been illustrated by the precedents which have since marked out with greater distinctness, the difference between the authority of parliament and the authority of the legislatures, and in the early years of the union, interference with provincial legislation was perhaps a more delicate task than it should be considered now, when the relative positions of the legislatures and parliament are better understood, and the principles which should guide both have become more familiar.

The most remarkable instance in which provincial legislation has over-run the limits of provincial competence, has been the legislation in reference to the administration of justice. It has been common for the provinces to enact from time to time what the qualifications of the judges who were to be appointed by the Governor General, should be, although this seems to the undersigned to be an attempt to control, by provincial legislation, the power vested in the Governor General by the British North America Act.

The most plausible argument offered in defence of such legislation has been the contention set up in one quarter that, inasmuch as it is for the provincial legislatures to say whether this court shall be constituted or not, it is proper for them to say that the court shall be constituted provided judges of certain qualifications are appointed to preside therein. This seems to the undersigned to be erroneous in principle. It is an attempt to provide that the power of the governor shall be exercised only *sub modo*, and if the principle were recognized it would be competent to provide that provincial courts should only be established, provided the judges should be those nominated by the provincial executive, or taken from a class nominated by that executive.

Again, in reference to this subject, doubtful legislation has been adopted in nearly all the provinces setting up courts with civil and criminal jurisdiction, with judges appointed by provincial or municipal authority. In some instances, and with respect to some of these tribunals, it would seem that the doubts as to their constitutionality have been lessened or removed by the Dominion Parliament, from time to time, recognizing them, or conferring jurisdiction upon them. As regards others of them, the legislation may still be open to grave question, although in most cases, as in the case of Quebec, now under consideration, the legislatures have been careful to avoid conferring the title of "judges" upon the officers whom they have really undertaken to clothe with judicial powers.

In legislating upon this subject, the enactments have followed a course which it has been difficult to control without seeming to infringe unnecessarily on provincial action, and without seeming, at least, to impugn a series of provincial statutes which have frequently been left to their operation. In other instances the promoters of this kind of legislation have been disposed to assume that the organization of a tribunal with small civil and criminal jurisdiction presided over by a judge or magistrate, appointed by the provincial executive, would be within provincial authority, and that such a tribunal having been established, its authority and jurisdiction could be widened and increased under the powers which the provincial legislatures possess to regulate the administration of justice in the province "including the constitution, maintenance and organization of the provincial courts both of criminal and civil jurisdiction and including procedure in civil matters in those courts."

A reference which will presently be made to reports of preceding Ministers of Justice, on this and kindred subjects will show how necessary it seemed to the predecessors of the undersigned, in times past, to prevent encroachments, by this means, upon the appointing power of the federal executive, and how necessary it was deemed to prevent the confusion and injustice which must ensue when a tribunal to which suitors have resorted for justice, has decided upon the rights of parties without having had jurisdiction.



The Order in Council under review, in presenting to your Excellency what is claimed to have been the law, respecting district magistrates in the province of Quebec, before the passage of the disallowed Act, refers to a series of enactments which are not unlike the class of statutes which has last been adverted to.

In the year 1869, the legislature of Quebec, by chap. 23 of that year, declared that the Lieutenant-Governor in Council might appoint one or more persons to be district magistrates with the power of justices of the peace and judges of sessions of the peace. Their salary was not to exceed \$1,200, and their civil jurisdiction was limited to \$25, excepting as to tithes, taxes, penalties and damages recoverable under the Lower Canada Municipal Act, and under other certain Acts of Quebec. In these enumerated cases their jurisdiction was unlimited, provided the defendant resided within the county in which the court was held, or that the debt was contracted therein, and the defendant resided within the district.

The same Act purported to confer power on the Lieutenant Governor in Council to establish additional magistrates in the district of Saguenay, with jurisdiction up to \$200. This Act may be contended to have had validity as applying to a provincial court of lower rank, than any of the courts in respect of which the appointing power has been given to the Governor General in Council by the British North America Act, or it may possibly be sustained on other grounds which it is unnecessary to seek for at present. It cannot be supposed, however, to have had validity from the fact that it was left to its operation by the federal executive, although this is almost the sole ground on which its validity is assumed in the Order in Council under review. No argument can be drawn from this statute as to the validity of the disallowed Act, because the Act of 1888 differed from it in essential points, some of which have already been enumerated and may be referred to hereafter. The Act of 1869, however, contains provisions which clearly illustrate the remarks before made as to the disposition to encroach upon the powers of the federal parliament and executive, in regard to the administration of justice. Some of its provisions would hardly be repeated by the legislature now, in the light which has been thrown upon our constitution by twenty years of experience. Such for example are the provisions of the 9th section which conferred on each of the magistrates, powers which the Parliament of Canada had declared should be exercised only by two justices of the peace, or by certain other specified officers, the district magistrate not being one; and section 10, which undertook to extend to district magistrates the provisions of an Act of the Parliament of Canada respecting justices of the peace; also section 28 which appropriated the moneys received from penalties, forfeitures and fines imposed by a district magistrate in such manner, and at such times, as the Lieutenant-Governor might direct, although the greater portion of those fines and penalties would, according to the Act, be recoverable under Dominion Statutes, and belong to the Dominion of Canada.

In the next year, by chap. 11, of 1870, assented to 1st of February, 1870, an attempt was made to withdraw the meaning of the obviously objectionable provisions of the Act just referred to, by adding a section declaring that that Act should "be construed as intended to apply to such matters as" were "within the exclusive control of the legislature" of the province, etc. Under ordinary circumstances such a provision would be unnecessary. It is obvious that no provincial statute can be construed as extending to anything outside of provincial powers, but the adoption of the section was somewhat significant, and leads to the belief that some of the provisions referred to were pointed out between the sessions of 1869 and 1870 as being objectionable.

In the following year, by chap. 9, of 1871, assented to 23rd December, 1871, the limit of civil jurisdiction was raised from \$25 to \$50. Jurisdiction was given to the district magistrates in certain cases "to annul or to rescind a lease," and to award "damages for breach of the stipulations of the lease." Power was also given to award costs on the tariff of the circuit court, and to sell immovables for sums exceeding \$40, according to the practice of the circuit court. Thus, the court having been established with a magistrate appointed by provincial authority, the process of expending its jurisdiction began.



It went on in the year 1874, when, by chap. 8, assented to 28th January, 1874, it was again enacted, with great particularity, that every district magistrate should have the power vested in one or more justices of the peace and of a judge of sessions, and that such magistrate should "exercise all such functions proper to a district magistrate, as required or authorized by any Act or Acts of the province of Quebec, or by any law whatever," and should "act in any case or manner, and in any and every manner authorized by the law." By three of the sections of the same Act the provisions of several statutes of the Parliament of Canada (which of course could only be extended by the Parliament of Canada) were extended for the purpose of making the meaning of the legislature clear to confer on those officers the powers which Parliament conferred on other officers.

The fines and penalties recoverable before the magistrates were again dealt with as belonging to the province, and the tenure of office was established, by the provision that removal from office should not be made, without the reasons assigned in an Order in Council.

In the following year, by chap. 81, of 1875, assented to 24th December, 1875, there is a declaration that the Act of 1874 had not enlarged the jurisdiction of the District Magistrates' Courts.

In the following year, by chap. 12, 1876, assented to 28th December, 1876, the jurisdiction was altered in such a way that residence within the district was not necessary to jurisdiction in some of the exceptional cases where the jurisdiction had been left unlimited, as to amount, by the Act of 1869, and it was declared sufficient that the defendant should live in the province.

By chap. 15, of 1885, assented to 9th of May, 1885, in the county of Gaspé and part of the county of Saguenay, the civil jurisdiction was raised to \$99.

The extent to which this court possesses jurisdiction, in respect of the specially enumerated cases, may be seen from the fact that in the suit of the Corporation of St. Guillaume *vs.* the Corporation of Drummond, in 1876, reported on appeal in 7 *Revue Légale* 562, judgment was rendered for municipal taxes by the district magistrate (appointed by the Lieutenant-Governor in Council) for \$1,880.00.

Finally, by the disallowed Act, the "District Magistrates Court," in so far as the district of Montreal was concerned, (and this includes the city of Montreal and eight counties besides) having matured its growth by being made a court of record, with such extensive powers, with its judges holding office during good behaviour, and removable only on the joint address of the legislative council and assembly, with the salaries of its judges raised to \$3,000—all the powers and jurisdiction of the judges of the superior court, in respect of the circuit court, having been conferred upon those magistrates, the new tribunal, which has been eighteen years in reaching maturity, was ready to take the place of the circuit court. The circuit court was then abolished in the district of Montreal, and the places of its judges, commissioned by the Governor General, were taken possession of by the district magistrates.

The veil was still to be kept up over the title of the judicial officer, and had "district magistrates" inscribed upon it, but it was provided that this should have no legal effect, by the enactment that, although "district magistrate" might not mean "judge," the word "judge" appearing everywhere should mean "district magistrate," in relation to the circuit court affairs and jurisdiction.

It seems to the undersigned evident:—

(1.) That the government of the province of Quebec are not warranted in assuming that because this series of enactments, in reference to district magistrates' courts, was permitted to go on without disallowance, the statutes are therefore *intra vires* of the legislature of Quebec.

(2.) That if, by a gradual increase of jurisdiction, a new court can be substituted for the circuit court, the legislature would have the right in the same way to go on extending the jurisdiction, until the court was sufficiently equipped to take the place of the superior court, and that by the same process the executive of the province could obtain control of every court in the province, the same device, if necessary, being used to conceal the word "judge."

(3.) That even if this mode of proceeding by the provincial legislature be not *ultra vires*, it should be controlled by the power of disallowance, vested in your Excellency, because it eventually results in a transference of the judge-appointing power, from the Dominion to the provincial executive.

The undersigned, therefore, cannot agree with the statement contained in the Order in Council, under consideration, that because this series of enactments was made by the province of Quebec "it is, therefore, evident that, before the sanction of the statute in question, the Lieutenant-Governor had, and that he will have, after the coming into force of the disallowance, the power to appoint district magistrates and to establish magistrates' courts in every county," &c., "with the civil jurisdiction already mentioned," and that "in declaring the power of appointing judges, *ultra vires*, the Dominion authorities deny to the executive of this province a power it possesses and has exercised since 1869, that it possesses and exercises actually, and will continue to exercise in the future, by virtue of laws anterior to the disallowed statute."

To show that the view hereinbefore expressed is not a novel view to take of such enactments, and to show likewise that the Government of the province of Quebec is not justified in assuming that the federal executive admit the validity of all Acts which it leaves to their operation, and loses the power of disallowance over similar statutes thereby, the following reference may be made to some of the reports which have been presented by the predecessors of the undersigned, on provincial legislation of this character.

A statute of Ontario, assented to 23rd January, 1869, chapter 22, made provision that judges of the county courts of Ontario should hold their office during pleasure, and should be subject to be removed by the Lieutenant-Governor for inability, incapacity or misbehaviour, and was specially reported on by the Honourable Sir John A. Macdonald, then Minister of Justice, and being referred, at his suggestion, to the law officers of the Crown in England, the latter, on the 4th May, 1869, reported that it was not competent for the legislature of Ontario to pass the Act. (*See ante*, pp. 83-92). The report was signed by Sir Robert Collier and the present Lord Chief Justice of England. It would seem that the legislature of Ontario had acted in pursuance of the theory that its powers to make laws in relation to the administration of justice in the province, "including the constitution, maintenance and organization of provincial courts," involved the power to limit the tenure of office, and to constitute the court with a proviso, in effect, that the appointing power of the Governor General should be exercised *sub modo*.

The Minister of Justice of that day, and the law officers of the Crown in England, maintained that that could not be done.

On the 19th January, 1870, the same Minister of Justice reported in favour of the disallowance of the supply Bill of the province of Ontario, because it supplemented the salaries of certain of the judges of that province, and the Act was disallowed accordingly.

On the 14th April, 1873, the same Minister of Justice took exception to an Act of Manitoba imposing a fine upon judges for neglecting to perform any duty, and recommended that the attention of the legislature of Manitoba be called to the objectionable enactment. In the same report it was recommended that the government of Manitoba should be given to understand that the Governor General did not consent to the limitation of his power of selection of judges, contained in the Act of Manitoba, which pretended to define the qualifications of the persons who should be appointed to the bench. The government of Manitoba was informed that the Governor General would not feel bound by that Act in any appointments to the Bench. In approving that report the Governor General added in his own hand the words, "I conclude that the recommendation to be conveyed to the Lieutenant-Governor is sufficient security for the amendment of these Acts."

On the 2nd September, 1874, the Honourable Mr. Justice Fournier, then Minister of Justice, commented on an Act of the province of New Brunswick, chap. 29, of 1873, as being, in fact, an appointment by local authority of a judge. Correspondence



led to an amendment of that Act in accordance with his view. On the 18th November 1874, the same Minister of Justice reported that the provisions of an Act of the legislature of Ontario, with respect to the qualifications to be possessed by certain judges, was *ultra vires*, as placing a limit on the discretion of the Governor General, which was not to be found in the British North America Act, and he declared that such a provision was ineffectual, and that the Governor General would not be bound by it.

On the 9th of March, 1875, the same Minister of Justice recommended the disallowance of a statute of British Columbia, because, after the appointment of county court judges in particular districts, the statute reported on, empowered the Lieutenant-Governor to appoint the place at which the county court judges should preside from time to time, the minister declaring that this was practically assuming the power of the appointment of judges, and the Act was disallowed accordingly.

On the 13th October, 1875, the Honourable Edward Blake, then Minister of Justice, reported against a similar statute of the same province. He said that the consequence of permitting the Act under consideration to go into operation would be to permit the Lieutenant-Governor in Council to arrange the boundaries of these districts, and to alter them at his pleasure, and so, practically, to determine, at his pleasure, the places within which the county court judges should have jurisdiction.

He contended that such an enactment was objectionable "as the alterations thereby authorized might practically result in the appointment by the local government of a county court judge to a new district or judgship, thus transferring to the local government a part of the power of appointment vested in this government under the constitution," and he added, "so long as the local legislature keeps within its own hands the division of the districts, and the alteration of their boundaries, this government has, by virtue of the power of disallowance, some measure of control over such action; but should this Act go into operation, no such control could thereafter be exercised here."

On the 29th September, 1877, the Honourable R. Laflamme, then Minister of Justice, called attention to various Acts of British Columbia, relating "to the gold commissioner and his powers as judge of the mining court, and to the danger of allowing legislation, which increases from time to time, the jurisdiction of the court, the judge of which has not been appointed by the Governor General."

He proceeded to relate the various Acts by which the jurisdiction was gradually accumulated until, in the opinion of the Minister, the court had at length become, by five successive enactments, a court within the meaning of the 96th section of the British North America Act.

He thought it was not "necessary, in order to bring a court under the provisions of this section, that it should be called by the particular name of 'superior,' 'district' or 'county court,'" and, although he did not recommend the disallowance of the statute, he recommended its repeal or amendment by the provincial authorities, and expressed this view: "It will be readily seen how easy it would be for the local legislature, by gradually extending the jurisdiction of these mining courts, and by curtailing the jurisdiction of the county court, or supreme court, as now established, to bring within their own reach, not only the administration of justice in the province, but also practically the appointment of the judges of the courts in which justice is administered."

On the 3rd October, 1877, the same minister reported against an enactment of the province of Ontario to provide that the stipendiary magistrate of the territorial district of Muskoka, Parry Sound and Thunder Bay should act as a division court judge, with like jurisdiction and powers, as were possessed by county court judges in division courts in the counties, as being in conflict with the 96th section of the British North America Act.

He refrained from recommending disallowance of the Act, as Acts previously passed by the provincial legislature conferring certain judicial powers in civil matters on stipendiary magistrates, in relation to division courts of Ontario, had been left to their operation, and those powers had been substantially extended by the Act then under his review, but he pointed out that the same danger which had received his notice in the case of British Columbia might ensue from this class of legislation.



The jurisdiction of the court which he referred to only reached \$100, excepting when the consent of parties was given for the disposal of cases of larger amount. He took special exception, however, to the provision that all enactments from time to time in force in Ontario, relating to division courts in counties, should apply to the division courts of these districts, stating that while it might be "quite within the legislature of Ontario to increase the jurisdiction of the division courts in counties, as such courts are now presided over by judges appointed by the Dominion." The attempt to exercise that power in relation to division courts presided over by judges appointed by Ontario would be objectionable, and he intimated that the Act would be disallowed unless amended. The same objection was conveyed in a report of the same minister in reference to New Brunswick legislation on 22nd December, 1877.

On the 14th June, 1879, Chief Justice McDonald, then Minister of Justice, took exception to an Act of Prince Edward Island, which allowed a small fee for costs taxed by the county court judge, as being a breach of the provisions of the British North America Act in relation to the emoluments of judges.

On the 20th January, 1880, the same minister called attention to an Act of Ontario, in amendment of a similar Act to that relating to the territorial districts of Muskoka, Parry Sound and Thunder Bay. This Act gave the appointment of the judge to the Lieutenant-Governor, fixed the salary and enlarged the civil jurisdiction, but was not different in principle from the statute which had been commented on in 1877. This Act was disallowed.

On the 30th January, 1882, Sir Alexander Campbell, then Minister of Justice, reported that an Act of Ontario (chap. 5, 1881) consolidating the superior courts, and establishing a uniform system of pleading, practice, etc., contained provisions which appeared to be *ultra vires*, as being in effect an assumption of the appointing power, by the provincial legislature, and he caused commissions to be issued to the judges, on the reorganization of those courts, in order to place their authority beyond question.

In the same report he took exception to a provision to constitute the judges of the county courts, official referees and local masters.

On the 8th May, 1883, the same minister called attention to the legislation of the province of British Columbia, conferring jurisdiction on gold commissioners appointed by the Lieutenant-Governor of British Columbia, and the Act was disallowed.

In a report of the 13th April, 1887, the undersigned felt himself obliged to state that the provision of a Manitoba statute, to the effect that for certain misconduct the county court judge should forfeit his office, was *ultra vires* of the provincial legislature.

The contention is, however, made in the Order in Council under review that the court of appeal of the province of Quebec has recognized, as constitutional and *ultra vires*, in two cases, the legislation for the appointment of such district magistrates.

One of the supposed cases referred to is that of the Corporation of St. Guillaume vs. Corporation of Drummond (7 *Revue Légale*, 562). It seems remarkable to the undersigned that reference should have been made to this case for this purpose, especially by the emphatic statement that the judgment of the judge of first instance was unanimously confirmed in the court of appeal, by Judges Tessier, Monk, Sanborn and Ramsay. The most careful scrutiny of this case fails to detect anything to bear out the statement that in that judgment the enactments for the appointment of the district magistrates was "recognized as constitutional and *intra vires*." A judgment had been rendered by Mr. Justice Plamondon for \$1,880. An appeal was asserted (1) on the ground that the judge was himself liable to contribute to the defendant corporation towards any amount for which judgment might be given, and that he had been recused, and (2) that the amount claimed was above the jurisdiction of the court.

The judgment on the appeal was delivered by Sanborn J. on these two points only, and the question of *intra vires* and constitutionality of the legislation was not raised, considered, or even referred to.

The second case on which reliance is placed is that of *Regina vs. Horner* in 1876 (2 Cartwright's cases, 317), and the brief judgment delivered throws no light upon the

question. The court (per Ramsay J.) while admitting that difficulties might exist, "as to the conflict of the powers as an abstract question," the difficulty was practically disposed of by the case of *Regina vs. Coote* (L. R. 4 P. C. 599). The court (per Ramsay J.) stated: "The case of Coote, decided in the Privy Council, directly recognizes the power of the local legislature to create new courts for the execution of criminal law, as, also, the power to nominate magistrates to sit in such court. We have, therefore, the highest authority for holding that generally the appointment of magistrates is within the power of the local executives. So much being established, almost all difficulty disappears." Turning now to the case of *Regina vs. Coote*, which the Quebec court of Queen's Bench had relied on as solving all difficulties, as to the conflict of powers, it is matter of regret to find that it really has no bearing on that subject whatever. The single passage in that judgment which bears upon any constitutional question is contained in the following abstract from the judgment delivered by Sir Robert Collier: "The objection taken at the trial appears to have been that to constitute such a court as that of the 'fire marshal' was beyond the power of the provincial legislature, and that consequently the depositions were illegally taken. Subsequently other objections were taken in arrest of judgment and the question of the admissibility of the depositions was reserved. It was held by the whole court (in their Lordships' opinions rightly), that the constitution of the court of the 'fire marshal,' with the powers given to it, was within the competency of the provincial legislature."

There was no contention at the argument, and no decision by the court, as was supposed by Mr. Justice Ramsay, that the "power to nominate magistrates to sit in such courts, is within the power of the local executive." No solution, therefore, of the difficulty noticed by the court of Queen's Bench in the case of *Regina vs. Horner* is to be found in the decision of the Privy Council in *Regina vs. Coote*.

The fact is that the statute then under review created officers called "fire marshals" with the power of making investigations concerning fires, and their power, in so far as it came under the consideration of the judicial committee, was merely that of summoning witnesses, and of committing suspected persons for trial. How then could it have been supposed that this was a decision, even in favour of the principle that local legislatures could "create new courts for the execution of the criminal law," as stated by Mr. Justice Ramsay, much less a decision affirming the power of the local authorities to appoint the judges to sit in such courts? The power to "create new courts for the execution of the criminal law," was expressly conferred by the British North America Act, and, fortunately, does not rest on the case of *Regina vs. Coote*. As to the suggestion that the local legislature had even attempted, by the Act then under consideration, to "create a new court for the execution of the criminal law," it is not only apparent from the reference of the judicial committee that no such attempt had been made, but the Court of Queen's Bench itself had decided, in 1872, (*ex parte Dixon* 2 *Revue Critique*, 231) that the statute in question had no connection with criminal procedure.

The only remaining passages in the judgment of *Regina vs. Horner* are an attempt to work out the theory on which it was imagined that the case of *Regina vs. Coote* had been decided, and the case altogether may be considered as far from a conclusive authority, without disrespect for the eminent tribunal which pronounced the decision. The decision, whatever its value, only had in view the district magistrates court as it existed in 1876.

Having put forward these two cases as the only ones which could be relied as judicial confirmation of any Act of the character of that which has been disallowed, the Order in Council proceeds to set up the contention that similar laws are in force in all the provinces of the Dominion.

If that contention were correct in point of fact it would hardly have much bearing on the question of constitutionality. But it is not correct. One instance given in the Order in Council is a statute of the province of New Brunswick which provides for the establishment of "parish courts" with civil jurisdiction up to \$40. This New Brunswick statute, it must be admitted, is similar to a number of other provincial statutes, but it differs in all the points to which importance has been given in the previous parts of this report, from the disallowed statute.



Reference is made in the Order in Council under review, to a decision of the Supreme Court of New Brunswick in the case of *Ganong vs. Bayley* (1 Pugsley and Burbidge, 324) as sustaining the "Parish Courts" Act.

The undersigned desires not to be understood as undertaking to discuss here the legality of statutes like the New Brunswick statute just referred to. The wide difference which has already been pointed out between those statutes and the disallowed Act, as to criminal jurisdiction, as to the extent of the civil jurisdiction, and as to the attempt to transfer certain of the powers of the Superior Court judges to provincially appointed judges, makes it unnecessary to enter upon such a discussion, but it may be proper that he should notice the New Brunswick decision just mentioned. because it may be supposed that although the statutes were different, the principles affirmed by the court may have been sufficiently wide to cover the disallowed statute, as well as the statute of New Brunswick which was then being considered. The question before the court was whether the New Brunswick Act (39 Vic., chap. 5), intituled "An Act to establish Parish Courts," was *ultra vires* of the local legislature, as to the section which provided that the commissioners (who are the judges in those courts), should be appointed by the Lieutenant-Governor in Council.

As already stated, the parish court was a court for the recovery of debts under \$40. Two of the judges of the Supreme Court of New Brunswick, out of five, denied the validity of the enactment. Two of the judges who affirmed the validity of the enactment, did so on the ground that all the power of the provincial legislature and executive which existed before the union of the provinces remained to the provincial legislature and executive after the union, except in so far as altered by the provisions of the Union Act.

This principle, without which there would not have been a majority of the court to uphold the provision of the Parish Court Act, would not now be affirmed since the judicial committee of the Privy Council (as well as other tribunals), has so clearly established that no powers are possessed by the provincial legislatures, except such as are conferred by section 92 of the British North America Act and that all other powers are vested in the Parliament of Canada. It may be that such statutes as that regarding the parish courts are *intra vires* the provincial legislature without the disallowed statute being so, but if they are *intra vires*, it can hardly be from the weight of the New Brunswick decision just quoted, or from the reasoning given by the majority of the court.

Another of the statutes referred to in the Order in Council as being similar to the disallowed Act is one passed by the legislature of Ontario, and which conferred jurisdiction on stipendiary magistrates in territorial and temporary judicial districts.

The undersigned has, however, already shown that the provisions of this Act were distinctly excepted to in the report of the Honourable Mr. Laflamme, and that a request was made that it should be repealed before the time for disallowance should expire, that that request was unheeded, and that a subsequent enactment of a like character, but going a little farther in conferring jurisdiction, was disallowed. Legislation of that kind has not been continued in Ontario, but the legislature has in recent years avoided doubtful ground by establishing the court, merely, and leaving the appointment of the judge to the Dominion executive.

The Order in Council now under consideration, after presenting the reasoning which has been herein reviewed, with regard to the constitutionality of the disallowed Act, proceeds to give a statement of facts which seems to the undersigned to have no bearing upon that question and no relevancy to the question of disallowance. It refers to the fact that in 1887 the legislature of Quebec authorized the appointment of two additional judges of the superior court, and calls your Excellency's attention to the fact, according to a principle acknowledged by the Dominion authorities, and especially by the Right Honourable the First Minister, in a speech in Parliament in 1880, that the wish of the provincial legislature on such a subject should be respected. On this point there need be no controversy. A representation made by a provincial legislature as to the necessity for an increase in the number of judges, or on any other subject, is entitled to



very great respect, and it was not necessary, in order to obtain this admission, that the speech of the first minister, made under widely different circumstances from those presented in the province of Quebec, and in relation to a state of affairs in British Columbia on which the opinion of the provincial legislature was peculiarly important as there was but little question as to the facts, (the controversy turning largely on a matter of opinion as to the best policy to be pursued in organizing the judicial staff of that province) should be referred to.

Without digressing into a consideration of the weight which the representations of the provincial legislature should have, under various sets of circumstances that may arise, the undersigned would suggest that, inasmuch as the authority for the appointment of judges of the rank provided for in the Quebec Act of 1887 is vested in your Excellency, and the provision for the salaries, allowances and pensions for such judges can alone be made by Parliament, the responsibility of recommending the necessary provision to Parliament is not wholly removed from your Excellency's advisers by the action of the provincial legislature. It would seem proper that your Excellency's advisers should be informed of the facts which make the appointment of additional judges necessary, so that they may present to Parliament sound reasons if any exist, for the increased expenditure asked for. This has not been done by the executive of Quebec since the passage of the Act of 1887, but nevertheless in the session of Parliament of 1888, provision was made, at the request of your Excellency's advisers, for one of the two additional judges, and the appointment of that one had already been made when the Order in Council under review was passed.

It may be that a careful examination of the facts and statistics connected with the administration of justice in the province of Quebec, will make it proper that Parliament should provide before long the salary of the other judge for whom a place was made by the Quebec Act of 1887. If so, the undersigned will esteem it an agreeable duty to recommend compliance with the wish implied in the passage of that Act, and he does not desire to be regarded as wanting in respect for the representations of the Quebec legislature because he has deemed it his duty to advise that a statute which he believes to be in excess of the powers of that legislature should not be allowed to go into operation. It seems unnecessary to say, however, that the fact of a provincial legislature having done its part towards enlarging the number of judges, and the circumstance, if such exists, of additional judges being needed, cannot justify the attempt on the part of the provincial legislature to seize the appointing power. Yet such seems to be one of the reasons put forward in justification of the disallowed Act.

The Order in Council of the Quebec Government then proceeds to show that the legislative assembly of Quebec in passing the disallowed Act, adopted a resolution "that the new district magistrates should only be appointed one month after that Act" should have been "assented to," in order to allow the federal government to "appoint the two additional judges whose appointment had been authorized," and should not be appointed if the increase in the number of superior court judges should be made. The Order in Council then goes to show that on the 14th of July last, copies of the disallowed Act and of the resolution just referred to, were transmitted to the Minister of Justice by the Attorney General of Quebec, that the proclamation putting the Act into force was made on the 30th August only, and the appointment of the district magistrates was made only on the 30th August last.

The object of these statements seems to be to present a complaint, that the action of your Excellency's advisers in deciding to recommend the disallowance of the Act of 1888, was unduly delayed and that the Quebec executive were in consequence allowed to proceed to the appointment of the magistrates on the assumption that the additional superior court judges would not be appointed, and that the provincial Act would be left to its operation.

This complaint, if the undersigned is right in assuming that such a complaint is intended, appears to be founded on a misapprehension of the facts. The Act was assented to by the Lieutenant-Governor of Quebec on the 12th July, 1888. It contained no provision as to the date when it should come into force. Chapter 4, of the Quebec

statutes of 1871, provides (and it is re-enacted by Revised Statutes, 1888, art. 5), that a statute of that province "whenever its commencement is not otherwise therein provided for shall, if it be not reserved, come into and be in force, on and from the sixtieth day after the day on which it was assented to." The disallowed Act, therefore, even without any interference by the federal executive, could not come into effect until the 10th day of September, 1888, and the executive of Quebec would not have power, until that date, to issue the proclamation abolishing the circuit court, or to appoint the district magistrates or to do any other of the matters provided for by the disallowed Act. Notwithstanding this, the proclamation was issued and the magistrates were appointed eleven days before that date.

Your Excellency's advisers could hardly have assumed that the executive of Quebec would desire to do, before the 30th August, acts which they were only empowered to do on the 10th of September at the earliest.

That your Excellency's advisers did not unduly delay their action in respect to the disallowed Act, is further apparent from the following circumstances: the authentic copy of the disallowed Act, on which authentic copy alone action has to be taken, if taken at all, in respect of disallowance, was only received by the Secretary of State, and referred to the undersigned on the 8th day of August last. Although the time for disallowance would not expire for twelve months from the latter date, the report of the undersigned was made on the 3rd day of September, and your Excellency was pleased to approve thereof, and to order the disallowance of the Act, on the 7th day of September. Immediately afterwards, the undersigned sent, by telegraph, an intimation to the First Minister of Quebec, that this had been done, in consequence of that gentleman having requested the undersigned to give him the earliest possible information as to the action which would be taken in reference to the statute.

The Quebec Order in Council next proceeds to state a grievance which seems to differ materially from the one just noticed, inasmuch as it is a complaint that in dealing with the disallowed Act, your Excellency's advisers acted with too much expedition. Reference is therein made to a memorandum of the Minister of Justice, dated on the 9th day of June, 1868, recommending the course which should be pursued in reference to a review of the provincial statutes, and the government of Quebec declares that in the present case of disallowance those rules have not been observed.

The only rule to which this complaint can refer, by any possibility, is the following:—

"That where a measure is considered only partially defective, or where objectionable as being prejudicial to the general interests of the Dominion, or as clashing with its legislation, communication should be had with the provincial government with respect to such measure, and that in such case the Act should not be disallowed if the general interests permit such a course, until the local government has had an opportunity of considering and discussing the objections taken and the local legislature has also an opportunity of remedying the defects found to exist."

The undersigned does not understand that the adoption of these general rules in 1868 in any way limited or controlled the exercise of your Excellency's power of disallowance. They were suggestions for the guidance of the Minister of Justice of that time, and for his successors in office, and in so far as provincial governments were concerned, they were merely indications of a line of action which your Excellency's advisers at that period thought suitable to be adopted. They were not in any sense an agreement with provincial governments, and at any time when they may be departed from it would seem that the provincial executives have no reason to complain of the exercise of your Excellency's powers by any other method. In the present instance, it seems apparent that the complaint or departure from these rules is hardly well founded. It can hardly be contented that in dealing with the objectionable statute, the provincial executive was at liberty to proceed with the utmost expedition, but that the federal executive was bound to pursue a course of remonstrance and delay which would have led to great confusion and public inquiry if the view held by the federal executive was right. It can hardly be contended that if your Excellency's advisers thought the im-



portant provisions of the disallowed Act to be unconstitutional, and in excess of the powers of the legislature, they should have allowed the Act to be proclaimed, the judges to be appointed by the Lieutenant-Governor, the circuit court to be abolished by proclamation, the new tribunal to exercise its large powers in a great section of the province of Quebec without authority, suitors to be involved in expense, judgments to be rendered and enforced seizures made, property sold, personal liberty restricted, while your Excellency's advisers would be remonstrating with the provincial executive and waiting for the legislative session of 1889, in order to give that legislature "an opportunity of remedying the defects found to exist."

It seems to the undersigned that, quoting the language of the rule which, it is claimed, was violated, "the general interests" did not "permit such a course."

Under the circumstances which the undersigned has presented in this report, he ventures to submit that the government of Quebec was under an erroneous impression in supposing that in disallowing the District Magistrates' Act of 1888, your Excellency's government was actuated by any disposition whatever to limit the actual right of that province "to adopt any law deemed necessary for the good government and prosperity of the province, within the limits of its powers and attributes."

JNO. S. D. THOMPSON,

*Minister of Justice.*

*His Honour the Lieutenant-Governor of Quebec to the Secretary of State :*

GOVERNMENT HOUSE, QUEBEC, 1st March, 1889.

SIR,—I have the honour to transmit you herewith, for the consideration of his Excellency the Governor General, a report of the Attorney General of the province of Quebec, approved by my executive council respecting the disallowance of the Act establishing the magistrates' courts for the city of Montreal.

I have, &c.,

A. R. ANGERS,

*Lieutenant-Governor.*

*Report of the Hon. the President of the Executive Council of Quebec, approved by His Honour the Lieutenant-Governor in Council, on the 1st March, 1889.*

The undersigned has the honour to report :

That he has had under consideration, a report of the Minister of Justice of Canada, approved by his Excellency in Council on the 22nd of January last, in reply to a despatch of his Honour the Lieutenant-Governor of Quebec, of the 2nd October last.

The undersigned does not propose to enter into a discussion of the several precedents quoted in the above report concerning the disallowance of the Act creating magistrates' courts for the city of Montreal : he will simply confine himself to remark, that as long as judgments of the court of appeal, which is the highest court in this province, have not been set aside by a higher tribunal, he considers them as the law of the country, and believes they should receive due consideration from the Minister of Justice.

The undersigned takes issue with the said report, principally on the following points :—

The said report assumes that a local legislature has no right to determine the qualifications of the judges of the courts which it may create.

That opinion is based on Sec. 98 of the British North America Act of 1867. The argument is this :



By that section it is enacted that the judges of the courts of Quebec shall be selected from the bar of that province. The undersigned is of opinion that that section has no bearing on the question, because of the circumstances under which this section was enacted. By the law which was in force at the time of Confederation, the legislature of the then province of Canada had the right to constitute, maintain and abolish courts of justice having civil and criminal jurisdiction, and the executive of Canada had the power to appoint the judges of the said courts, and to remove them under the limitations prescribed by the constitution then in existence.

By the British North America Act of 1867, the several powers heretofore belonging exclusively to the legislature of Canada and to the executive power of Canada, was distributed between the new legislative bodies and the executive authorities created by the Act of 1867.

The Act gave the power to create, maintain and abolish courts of justice of civil and criminal jurisdiction to the provincial legislatures. By giving them such power, the Act impliedly, gave them the power to determine the qualifications of the judges to be appointed to hold these courts. If they had not that power, their power to constitute the courts would be perfectly nugatory; it would amount simply to a request to the Federal Government to appoint judges for certain purposes. Section 98 is not opposed to this opinion. It is true, that it enacts that the judges of the courts of Quebec shall be selected from the bar of the province, but this was a temporary provision rendered necessary by the appointing power conferred on the federal executive. There is no opposition between section 92, subsection 14 and section 98. By section 92, subsection 14, the local legislature are empowered to constitute, maintain and organize courts of civil and criminal jurisdiction, and to determine the qualifications of the judges who shall sit in those courts. As soon as they have made a provision for creating a court and have determined the qualifications of the judges to sit therein, the federal executive is bound by their enactments: but as long as the local legislature has not determined otherwise, the only qualifications of the judges that are to be appointed by the federal executive, provided for by section 98, are, that they must be taken from the bar of that province.

Therefore, section 98 is not intended to limit the general power of the local legislatures to determine the qualifications of the judges to sit in the courts by them created, but is only intended to determine the qualifications of the judges appointed to sit in those courts, when these qualifications have not been expressly determined by the legislatures creating such courts.

The undersigned also joins issue with the contention of the report of the Minister of Justice referred to, which says that the local legislature of the province has not the power to take from a court, presided over by justices appointed by the federal authorities, a portion of its jurisdiction and to give it to an inferior court, presided over by magistrate appointed by the provincial authorities.

The undersigned does not see clearly from the report of the Minister of Justice, whether he maintains the opinion that the local legislatures have no power to create courts of however small jurisdiction, whose judges should be appointed by the local executive. The undersigned humbly submits that it can hardly be denied that the local legislatures have such power. They have the general power, as stated above, of creating courts of justice with any jurisdiction that they may choose. If there was nothing else in the British North America Act, the power to appoint the judges of those courts, would, according to general principles, belong to the local executives, because it is a rule that wherever the legislative branch of a subject belongs to a particular legislature, the execution of the same belongs to the executive branch of the same legislature. Therefore, if there was nothing as to the appointment of judges in the British North America Act the power to appoint them would certainly belong to the provincial executives, therefore, also that power still belongs to the said local executives, as to all judges or magistrates to sit in courts created by the local legislatures, whose appointment has not been expressly transferred to the Federal Government. Now, let us see who are the judges whose appointment is removed from the local authority and given

to the federal executive. If we look to section 96 of the British North America Act, we find that it confines the appointing power of the Governor General in Council to the judges of the superior, district, and county courts in each province.

It might be contended that that provision merely applies to the judges of the superior, district and county courts then in existence, and not to those courts to be hereafter established, and there would be strong ground to support that contention. But it is unnecessary to discuss that point for the purpose of the present argument. Even admitting that section 96 exclusively reserves to the Governor General even the appointment of the judges of such courts if constituted hereafter, it cannot be contended that the Governor General has the power to appoint the judges of any other courts to be created by local legislatures. Therefore, the power to appoint such judges or magistrates exclusively belongs to the local executives. It is, therefore, evident that the local executives can appoint the judges of any other court but those of the court in question.

Now it is important to remark, that before confederation and since there has been, in the province of Quebec, courts of a different kind than those mentioned in the section 96, for instance there have been commissioner's courts, the establishment of which in a parish is left to the Lieutenant Governor. There have been recorders and justices of the peace authorized to sit as judges in several civil matters, for instance, for the collection of municipal taxes, wages, &c.

There can be no doubt in the mind of the undersigned that to the local executives alone, belongs the power to appoint judges of courts of that kind, and that power has never been denied to them, until the discussion brought by the passing of the Act creating magistrates' court at Montreal. There can be no question than that the local legislature can create courts, the judges of which may be appointed by the local executives. Now, is there any provision in the British North America Act, preventing the legislature of Quebec, which has the power to create courts of both kinds, that is to say, both of the kind whose judges are appointed by the Federal Executive, and of the kind whose judges are appointed by the local executive, from giving to a court of one kind a portion of the jurisdiction which, up to that moment, had belonged to the court of the other kind. For instance, for more than fifty years there has been in the province of Quebec, commissioners' courts having jurisdiction in personal matters up to \$25. The circuit court has always had concurrent jurisdiction with those courts. Can it be seriously contended that the local legislature of Quebec cannot transfer to those commissioners' courts, which were in existence in 1867, and have been left since under the control of the provincial executive, another portion of the jurisdiction of the circuit court, by giving jurisdiction and even exclusive jurisdiction, to the commissioners' court up to fifty or one hundred dollars? Evidently if it can appoint judges for that court when it has jurisdiction for \$25, there is nothing which can prevent it from appointing the same judges if the jurisdiction of the court was raised to fifty or one hundred dollars.

The undersigned regrets to say that he does not see the force in the argument used in the said report, which might be called argument *ab inconvenienti*. The report states in substance that if it is permitted to the local legislature to take from the circuit court, whose judges are appointed by the federal authority, a portion of its jurisdiction, and to transfer it to another court, whose judges are appointed by the local authority, it might go the extent of making nugatory the appointing power of the federal executive. The undersigned humbly submits that such an argument is not conclusive, under a constitution like ours. The inconvenience which may result from the exercise of a constitutional power does not destroy that power. Moreover, if every power given under that constitution was to be stretched to its utmost limit, it could hardly be worked. For instance the powers of the sovereign are theoretically so large that were he to exercise them to their fullest extent, he might ruin the country and render perfectly useless all the powers of the representatives of the people, and the country instead of being governed by the people, would be governed by a despot. But it has always been supposed that the powers conferred by our constitution would be exercised with proper discretion and good judgment, and it is also the way in which



they have been generally exercised, and therefore I repeat, an argument founded on the supposition of the stretching to its utmost limit of a certain power, is of little value.

In conclusion, the undersigned would remark that the report now referred to, has been drawn up under a misapprehension, when it takes it for granted that the government of this province, has relied on the fact that several Acts, the disallowance of which has given rise to the present controversy, is an incontrovertible proof that those acts were *intra vires*.

The undersigned is quite ready to admit that an Act may be left undisallowed without admitting that it is constitutional. But then the federal authorities are powerless, the court being the only power to put aside these unconstitutional laws. He would go even further and state, that, in his opinion the best course would be, as a rule, to leave all local Acts to their operation, reserving to said courts the decision of the question whether they are not *intra vires*. But the contention of the undersigned has been simply this: that when a great many Acts of that kind have been left to their operation and have not been attacked before the courts, or if attacked, have been maintained, it is a very strong presumption that they were *intra vires*.

The whole respectfully submitted.

Quebec, 28th February, 1889.

HONORÉ MERCIER,  
*President of Council.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 25th July, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, July 15, 1889.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report as follows on the despatch of the Lieutenant Governor of Quebec, dated the 1st of March last, transmitting for the consideration of your Excellency, a report of the Honourable the President of the Executive Council of that province, dated 28th February last, concerning the disallowance of the Act of Quebec, 1888 (XXV cap.) relating to district magistrates.

He concurs with the suggestion of the President of the Executive Council that as long as the judgments of the court of appeal have not been set aside by a higher tribunal, they are to be regarded as the law of the country, and should receive due consideration from the minister of justice.

The undersigned entertains no less respect than the President of the Executive Council for the judgments so referred to, but the president has evidently overlooked the fact that the judgments which he relied upon, as sustaining the constitutionality of the disallowed Act, were shown by the report of the undersigned, approved on the 22nd January last, to have no such effect.

One of the decisions of that court, which had been cited in support of the Act contained no reference whatever to the subject under discussion, or to any question of a similar nature. In fact the constitutionality of no Act, such as that under review, was involved in the suit, nor was any such point referred to in the argument or decision.

One of the other judgments cited has no direct bearing upon the subject, but referred to the question which had been raised as concluded by a judgment of the Privy Council which, as the undersigned pointed out, has no bearing upon it.

The only other decision cited was one of the Supreme Court of New Brunswick, which was quoted by the Quebec government on account of the reasoning which it contained, although the reasoning has since, in several cases, been shown to be fallacious, by judgments of the Judicial Committee of the Privy Council.

The undersigned is compelled entirely to dissent from the contention of the President of the Executive Council that the British North America Act gives to provin-



cial legislatures power to determine the qualification of the judges to be appointed by your Excellency. That Act undoubtedly gives the legislatures power to constitute the courts of the various provinces and to define their jurisdiction, and the undersigned finds it difficult to understand, and impossible to concur in the contention of the President of the Executive Council that that power would be nugatory unless it included the power to determine the qualifications of the persons to be appointed to the bench.

The British North America Act seems to have covered the whole ground when it gave the organization and constitution of the courts to the provincial legislatures and the power to appoint the judges to your Excellency subject only to one restriction on the powers of your Excellency, namely, that the judges should be appointed from the bars of their respective provinces.

The view of the undersigned, as stated fully in his previous reports on this subject, as well as that entertained by his predecessors in office, as expressed in their reports, from time to time, on provincial legislation, is that the power and discretion which were left to your Excellency unconditionally (save in the particular just mentioned) cannot be in any way lessened by provincial legislation.

In the document now under review, the President of the Executive Council states that he does not clearly see, from the report of the undersigned, approved 22nd January last, whether the undersigned maintains the opinion that the local legislatures have no power to create courts, of, no matter how small jurisdiction, whose judges shall be appointed by the local executives. In the previous report of the undersigned no question was raised as to the provincial power to create such courts, and as to whether the power might not be validly conferred on the local executive to appoint magistrates or judges for courts of small jurisdiction, and different from the courts mentioned in the clause of the British North America Act, which confers the appointing power on the Governor General, the undersigned distinctly declared in that report that that was not a matter involved in the discussion, as the legislature of Quebec, in enacting the District Magistrates Act and the Quebec Government in making the appointments, had clearly invaded the powers of Parliament and of your Excellency, even though the power to appoint some classes of officers with judicial functions might be with the local authority. The contention which is made in the document under review with regard to the effect of the provision of the British North America Act as to "superior, district and county court judges," does not, in the opinion of the undersigned, refute the view set forth in his previous report, (and indeed in that particular does not seem to undertake a refutation.) That view has been taken by nearly all the Ministers of Justice since the union of the provinces, viz., that the words of the British North America Act, referring to "judges of the superior, district and county courts," include all classes of judges like those designated, and not merely the judges of the particular courts which at the time of the passage of the British North America Act, happened to bear those names.

As to the contention of the President of the Executive Council that the power of the local executive to appoint judges of inferior courts was never questioned until the discussion brought about by the passage of the Act creating magistrates courts at Montreal, the undersigned has only to refer to his previous report, where numerous instances were given, extending over a long term of years, in which that power was denied or questioned by Ministers of Justice, in reports which have been approved from time to time by your Excellency's predecessors.

As to the further contention that the provincial legislature can take away the jurisdiction of courts, presided over by judges appointed by federal authority, and transfer that jurisdiction to judges appointed by the provincial executive, although that contention seems to be carried so far in the document under review, as that thereby the provincial legislature can convert its inferior court, presided over by magistrates of provincial appointment, into a court of the highest class, and thereby secure the appointing power, the undersigned has so fully dealt with that subject in a previous report that he does not deem it necessary to repeat here the observations which have been made there, and to which no answer has been offered in the document under review.

The President of the Executive Council has obviously misunderstood the previous report of the undersigned, in what he calls the argument a *inconvenienti*; no such argument was used for the purpose of showing that provincial powers, which are capable of abuse cannot be admitted to exist, but it was referred to as probably justifying, as the reports of predecessors of the undersigned had indicated, that the power of disallowance may have to be exercised when there is danger that the provincial power will be so abused as to deprive your Excellency of the appointing power conferred on you by the British North America Act, and as to thereby subvert one of the most important principles of the constitution.

The President of the Executive Council has also misunderstood the previous report of the undersigned as attributing to him the argument that the disallowance of Acts "is an incontrovertible proof that those Acts were *intra vires*."

The argument which the undersigned understood to be presented by the previous minute of the Quebec Government was, that the allowance of provincial Acts was an admission of the validity of such legislation, and indeed the argument of the President of the Executive Council almost goes that far, in the document under review, when he intimates that a great many Acts of the kind disallowed having been left to their operation, it is very strong presumption that they were *intra vires*. There was no intimation in the undersigned's previous report, that the executive council of Quebec had contended that such allowance was incontrovertible proof of the Acts being *intra vires*, but it was thought proper to show, as was shown in portions of the report which the president of the council has not referred to in the document under review, that the allowance of the Acts, from which a presumption of validity has been argued in support of the disallowed District Magistrates' Act, was accompanied by careful and distinct repudiation of any recognition of their validity. It seems necessary to state, in connection with the observation in the document under review, "that strong presumption arises from the fact that a great many Acts have been left to their operation, and have not been attacked through the courts, or if attacked have been sustained," that the Acts referred to do not seem to the undersigned, as he stated in his previous report, so objectionable as the disallowed District Magistrates' Act, or so clearly to transgress the bounds between provincial and federal authority. It must be repeated also that such a presumption can hardly be drawn against the express warnings contained in the reports by Ministers of Justice on those Acts, which have afforded, in the view of the Quebec Government precedents for the "District Magistrates' Act," and that in the absence of any judicial decision to sustain their validity, the allusion, above quoted, to the action of the courts, has not the cogency which it otherwise might possess.

The other points which are mentioned in the report of the President of the Executive Council have already been dealt with in the previous report of the undersigned, and the undersigned has not changed the opinions which are therein expressed, and as the report of the president of the executive council does not present any new arguments in relation to these matters, further action by your Excellency on the recent despatch of his Honour the Lieutenant-Governor seems unnecessary, but it is recommended that a copy of this report, if approved, be transmitted to his Honour.

JNO. S. D. THOMPSON,

*Minister of Justice.*



*Hon. Mr. Justice Würtele to the Secretary of State.*

JUDGE'S CHAMBERS, AYLMER, 28th August, 1888.

SIR,—I have the honour to transmit to you herewith a memorial from the executors of the late Charles E. Levey, of Cataraqui, near Quebec, respecting the Act recently passed by the legislature of the province of Quebec, authorizing a forced conversion of the funded debt of the province, and praying his Excellency the Governor General in Council to disallow the same as being an unconstitutional abuse of power on the part of the legislature, and to beg that you will submit it to his Excellency for consideration.

I have, etc.,

J. WÜRTELE.

*Petition to His Excellency the Governor General in Council from Executors of the will of late Charles E. Levey.*

*To His Excellency the Governor General of Canada in Council :*

The memorial of the undersigned executors of the will of the late Charles E. Levey, in his lifetime of Cataraqui, near Quebec, and administrators and trustees of his estate, respectfully represents :

That they subscribed for three hundred thousand dollars of the issue of bonds made by the government of the province of Quebec in the year 1882, and paid par therefor, and that they are now the registered holders thereof.

That at the same time the trustees for the marriage settlement of Charles Ernest Levey, the son of the above mentioned Charles E. Levey, also subscribed for and acquired at par fifty thousand dollars of bonds of the same issue, and that they are now the registered holders of the same.

That the said issue was made under the authority of a statute of the legislature of province of Quebec sanctioned on the 27th May, 1882, 45 Vic., ch. 18, which enacted that "the bonds or debentures shall bear date the first of July, one thousand eight hundred and eighty-two, and after the expiration of thirty years from that date shall be redeemable at all times, at the option of the government of the province."

That the bonds or debentures issued in the year 1882 under the said statute are each for a sum of five hundred dollars, and that the government of the province expressly stipulate and agree in such bonds or debentures to pay interest at the rate of five per centum per annum on the principal thereof half yearly for the term of thirty years from their date, and after that period until they are redeemed.

That the undersigned and the trustees of the said Charles Ernest Levey subscribed for and acquired the said bonds or debentures not as a speculation, but because they wanted a long investment, for the trusts created by the said late Charles E. Levey.

That in the last session of the legislature of the province of Quebec, a statute intitled: "An Act respecting the redemption of provincial debentures and the conversion of the debt," 51-52 Victoria, chapter 9 (1888), was passed, and was sanctioned on the 12th July last; and that the fifth section thereof confers upon the Lieutenant Governor in Council the power to reduce the rate of interest payable to the holders of the present bonds or debentures from five per centum per annum to four per centum per annum should they refuse to exchange their bonds or debentures for new ones bearing such reduced rate of interest, or to accept the payment thereof before their maturity.

That the said section reads as follows: "It shall be lawful for the Lieutenant Governor in Council to determine the delay within which the holders of the present debentures may exchange them for the new debentures or claim the redemption in cash, and to order that, after such delay, interest shall accrue upon all classes of debentures at the rate specified for the new debentures."



That it was alleged, when the Act was being discussed, that the government of the province of Quebec had the right to redeem its bonds or debentures at any time before maturity under the law of the province; and the undersigned contend that if such was the case, legislation to authorize the government to do so was unnecessary.

That the contention so advanced was however erroneous and contrary to the law and jurisprudence of the province, which is to the effect that when money is loaned at interest, the term is presumed to be stipulated in favour of the lender as well as of the borrower, as was recently ruled by the unanimous judgment of the Court of Review at Montreal in the case of *Ouimet vs. Menard*, reported in vol. 3 Montreal Law Reports, page 42.

That the provisions of the statute for the conversion of the funded debt of the province are in violation of the contract entered into between the government of the province on the one hand, and the undersigned and the trustees of the said Charles Ernest Levey, on the other, and therefore constitute an unconstitutional abuse of power.

That while the statute in question exposes the estate of the said late Charles E. Levey, and the trustees of the said Charles Ernest Levey to spoliation, it also has a pernicious influence not only on the public credit of this province and of the whole Dominion, but also on the private credit abroad of all its inhabitants.

That the undersigned look to your Excellency for protection.

Wherefore they humbly pray that your Excellency will be pleased, in the exercise of the royal prerogative, to disallow the said Act of the legislature of the province of Quebec.

And your memorialists will ever pray.

QUEBEC, 25th August, 1888.

JEMIMA LEVEY.  
J. WÜRTELE.

*Hon. Mr. Justice Würtele to the Secretary of State.*

QUEBEC, 30th August, 1888.

SIR,—Since I had the honour of forwarding to you the memorial of the trustees of the Levey Estate respecting the recent Act of the legislature of Quebec, authorizing a forced conversion of the funded debt of that province, I have seen the budget speech made in the legislative assembly by the provincial treasurer on the 15th May, 1882, in which he asked the House to authorize an issue of \$3,000,000, and I find that it contains a distinct undertaking that the bonds would not be redeemed for thirty years and the statement that lenders would, therefore, have the certainty of getting a sure investment for that period; and a reference to the bonds issued in 1882 will show that they are worded in accordance with the declaration then made. The forced redemption of this issue would, therefore, be a violation of the authorized words of the treasurer of the province.

I inclose you an extract from the budget speech in question and copy of one of the bonds, and I beg that you will submit them to his Excellency the Governor General with the memorial of the Levey Estate.

I have, &c.,  
J. WÜRTELE.

*EXTRACT from the Budget Speech of the 1st May, 1882, of the Provincial Treasurer of Quebec.*

The bonds or debentures will be for \$500 each, and will bear interest at 5 per cent, payable half-yearly on the 1st of July. The government shall have the right to redeem these bonds or debentures at any time after the expiration of thirty years from the 1st of July next.

This loan of three millions will, in fact, be the establishment of a constituted rent. The loan is essentially redeemable by the Government just as a constituted rent is redeemable. at the option of the debtor, under article 1789 of the Civil Code; but, in accordance with the provisions of article 390, it will be stipulated that the government shall not have the right to exercise this power until after the expiration of thirty years. By these conditions, on the one hand, the subscribers to the bonds or debentures will be sure of a safe investment for thirty years, and, on the other hand, the government may, after the expiration of this delay, take advantage of a period of prosperity or of a time when the rate of interest is low, to redeem its obligations, without being obliged to pay its debts at the price of any sacrifice, if it be found inopportune.

#### COPY OF BOND.

The government of the province of Quebec, under the authority of the Act 45 Victoria, chapter 18, and in consideration of five hundred dollars paid to it, promises to pay interest at the rate of five per centum per annum, on that sum to the registered holder of this debenture, from the 1st day of July, 1882, until the day fixed for its redemption, payable half yearly on the 1st day of January and of July, in each year, at the place in the province of Quebec, at which this debenture may be registered: and after the first day of July, one thousand nine hundred and twelve, this debenture be at all times redeemable by the payment of five hundred dollars, to the registered holder, on the first day of January or of July in any year, which may be fixed, at the option of the government, for the redemption of the debentures issued under the authority of the above mentioned Act of which the Provincial Treasurer shall give notice in the Quebec Official Gazette one year previously, and from the day so fixed for redemption, this debenture shall cease to carry interest.

QUEBEC, 1st July, 1882.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th January, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th January, 1888.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to submit his report on chapter nine of the Acts passed by the legislature of the province of Quebec during the session of 1888, entitled: "An Act respecting the redemption of Provincial Debentures and the Conversion of the Debt."

The object of this Act is to enable the government of the province of Quebec to issue debentures, bearing an annual rate of interest not exceeding four per cent, for the purpose of redeeming the outstanding liabilities of the province and thereby to effect, if possible, a saving in the amount of interest annually paid by the province.

This Act is without objection except in regard to section five, which provides as follows:—

5. It shall be lawful for the Lieutenant-Governor in Council to determine the delay within which the holders of the present debentures may exchange them for the new debentures, or claim the redemption thereof in cash, and to order that, after such delay, interest shall accrue upon all the classes of debentures at the rate specified for the new debentures.

A memorial has been addressed to your Excellency by the executors of the late C. E. Levey, of Cataraqui, setting forth the objectionable character of this section, and petitioning that the Act should be disallowed.

The debentures heretofore issued by the province are unquestionably contracts between the province and the holders of such debentures, and section five of this Act purports to give authority to the executive of the province to violate these contracts without payment of compensation therefor. Legislation of this character must prejudicially affect the credit of the province passing it, for reasons which are too obvious to require mention, and there seems reason to apprehend that it would tend prejudicially to affect the other provinces of Canada in some degree, as indicating the possibility that faith may not be kept inviolate between the provinces and their creditors.

The undersigned, therefore, recommends that the attention of the Lieutenant Governor of Quebec be called to the objectionable provisions of this Act, and to the detriment likely to ensue therefrom, in order that his Honour's advisers may have an opportunity of repealing the section which has been quoted above.

He recommends that a copy of this report, if approved, be transmitted to his Honour, and that in the meantime, and until the legislature of Quebec has had an opportunity of repealing such section, no further action be had in the premises by your Excellency.

JOHN S. D. THOMPSON,  
*Minister of Justice.*

(Translation.)

*His Honour the Lieutenant Governor of Quebec to the Secretary of State.*

QUEBEC, 6th February, 1889.

SIR,—I have the honour to acknowledge the receipt of your letter, dated 31st January last, transmitting a copy of an Order in Council and a report of the Minister of Justice with reference to chapter 9 of the Acts of the legislature of the province of Quebec, last session, on the subject of the redemption of the provincial debentures, and the conversion of the debt, to inform you that my advisers, while protesting against the interference of the Dominion authorities in the present case, and maintaining the right of the legislature of the province of Quebec to legislate, as during last session, on the subject of the conversion of the debt, in order to avoid greater inconvenience, accept the suggestion of the Minister of Justice to have clause 5 of the said Act repealed.

A bill will accordingly be submitted to that effect during the present session.

I have, &c.,

A. R. ANGERS,  
*Lieut.-Governor.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council, on the 19th day of January, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th January, 1889.

To His Excellency the Governor General in Council.

The undersigned having had underconsideration the following Acts of the legislature of the province of Quebec, passed in the session held in the year 1888, the titles of which Acts are mentioned in the schedule thereto (Chapters 1, 3-8, 10-16\*, 21-29, 31-50, 52-72, 74, 77-82, 84, 85, 86, 91-98, 100, 102, 104-106, 108-132,) respectfully recommends that they be left to their operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

\*NOTE.—Chap. 13. An Act respecting the settlement of the Jesuits' Estates. See *post*, p. 386.



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*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council, on the 29th January, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th January, 1889.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration his report on the following Acts passed by the legislature of the province of Quebec in the session of 1888, authentic copies of which were received by the Secretary of State on the 8th August, 1888.

Chap. 2.—An Act respecting the Revised Statutes of the province of Quebec,

The undersigned has the honour to report that inasmuch as he has now had an opportunity of examining the Revised Statutes of the province of Quebec, issued under the authority of chapter 5 of 50th Victoria, he does not consider it at present advisable to report specially upon this Act, reserving the same for further report.

Chap. 17.—An Act to amend and consolidate the laws relating to fisheries.

This statute authorizes the Provincial Commissioner of Crown Lands to lease such rivers as are the property of the province, defining the rights of the lessee, and imposing penalties upon persons fishing other than in the manner described by the Act.

It also provides (sec. 12) that the Lieutenant Governor in Council may, in his discretion make such regulations as he may deem necessary in the interest of the good management of fishing in the province: and further provides (sec. 15) that any person not having his domicile in the province of Quebec, who desires to fish therein must before beginning to fish, procure a license to that effect from the Commissioner of Crown Lands or from any person by him authorized.

The British North America Act gives to the Parliament of Canada exclusive powers of legislation in respect to sea-coast and inland fisheries. It also vests in the Dominion the rivers of Canada. This Act would appear therefore to be an infringement upon the property and powers of the federal government.

This position, therefore, is strongly contested by the provincial authorities and decisions of superior courts are cited as in favour of such contention. Under these circumstances, and it being probable that the point in dispute will be authoritatively settled by courts of ultimate resort at an early day it does not seem to the undersigned that the power of disallowance should be exercised in regard to this Act, and he recommends accordingly.

Chap. 30.—An Act to amend the Municipal Code.

Section 11 of this Act as to openings in the ice, is legislation affecting the Criminal Law, and is expressly at variance with chapter 162, sec. 29, of the Revised Statutes of Canada.

The undersigned is of opinion that this section should be repealed and recommends that, until the legislature of Quebec has had an opportunity of so doing, no further action be had in respect thereto.

Chap. 73.—An Act to incorporate the Chambly Manufacturing Company.

This company is incorporated for the purpose among other things of erecting and maintaining dams along the rapids of the River Richelieu, and to conduct water from said river by canals or flumes from such dams, for hydraulic and manufacturing purposes.

Section 6 of the Act provides that the company shall not erect any dams across the River Richelieu, nor do anything affecting the navigation of the said river or the Chambly canal, without the authority or consent of the government or of the Parliament of Canada, first obtained.

Had it appeared that the intention of the legislature in incorporating this company was merely to associate the incorporators together in order that they might by obtaining the necessary authority for the purpose, either by Dominion legislation or from the proper authorities carry on the enterprise for which they were incorporated, there would

be no constitutional objection to it, but the evident intention of the Act is otherwise. It professes to give absolute rights to the company in respect to the river, dealing with a subject wholly within the powers of the Canadian Parliament.

The undersigned is of opinion that the Act so far as it trenches upon the federal jurisdiction as herein pointed out should be amended, and he recommends that no further action be taken in respect thereto, until the legislature of Quebec has had an opportunity to make such amendment.

Chap. 75.—An Act to amend the charter of the Windsor and Brompton Bridge Company.

The original statute of which this is an amendment is chapter 77 of the Acts of 1872, incorporating a company for the purpose of erecting a toll bridge over the River St. Francis in the county of Richmond.

It appears from the original Act that the river where the bridge in question was intended to be built, was navigable for rafts and vessels; and sec. 4 of that Act is as follows :—

“The height of the arches of the said bridge shall be not less than six feet above high water, and the intervals between the abutments and piers shall be not less than one hundred and fifty feet, so as to provide for the free passage of rafts and vessels, and no drawbridge shall be required, but before the company commences to erect the said bridge, the plans and specifications for its construction shall be submitted to and approved by the Lieutenant Governor in Council, and no deviation from such approved plan shall be made without his consent.”

The object of the Act now under consideration is to amend this section, by providing that the height of the arches of the said bridge shall not be less than six feet above high water, and the intervals between the abutments and piers shall not be less than eighty feet.

The original Act was left to its operation without comment by the then Minister of Justice, but it appears to the undersigned that the original Act, so far as it purported to authorize the erection of a bridge over a navigable stream and thereby necessarily interfering with its navigation, was beyond the powers of a provincial legislature.

Doubtless a provincial legislature has power to incorporate a company for any local or provincial purpose, but in order to the effectual execution of such purpose, recourse to the Dominion legislature or Dominion officers may be necessary, and upon such consent being obtained, the provincial company may legally carry on the work for which it was incorporated.

The original Act above referred to having been left to its operation there does not appear to be any public necessity for the disallowance of the amending statute.

The undersigned, therefore, recommends that the same be left to its operation.

Chap. 76.—An Act to incorporate the Ste. Clothilde de Horton Bridge Company.

The company incorporated by this Act is authorized to build a toll bridge over the south-western branch of the Nicolet River.

The observations which the undersigned has made in respect to the Act incorporating the Windsor and Brompton Bridge Company, so far as the powers of a provincial legislature are concerned, apply equally to this Act.

The company, however, may execute the work referred to in the charter, not by virtue of any sanction therein given, but solely under and upon complying with the provisions of chapter 92 of the Revised Statutes of Canada, intituled: “An Act respecting certain works constructed in or over navigable waters.”

Sec. 2 of the Act should be so amended as to make it clear that the legislature of Quebec does not purport to give authority to interfere with the navigation of the river.

This might be done by providing that the purposes of the corporation may be carried out, so soon as it has obtained the necessary authority therefor under the Dominion Act.

The undersigned recommends that with a view to the amendment of the Act in the manner suggested, no further action in the meantime be taken in respect to it.



Chap. 83.—An Act to amend and consolidate the Acts incorporating the town and city of St. Hyacinthe and the Acts amending the same, and to confer further powers upon the mayor and council of the city of St. Hyacinthe.

Chap. 87.—An Act to amend the Act incorporating the town of St. Henri.

Chap. 88.—An Act to incorporate the town of Drummondville.

Chap. 89.—An Act to amend the Act, 46 Victoria, chapter 82, incorporating the town of Hochelaga, now the town of Maisonneuve.

Chap. 90.—An Act to erect the town of Coaticook into a town with a special charter.

The foregoing Acts are all Acts either incorporating towns, or amending Acts heretofore passed incorporating towns, and they all contain provisions more or less beyond the competency of a provincial legislature to pass.

In the Act incorporating the city of St. Hyacinthe (ch. 83) by sec. 133 it is enacted that the city council shall have full power and authority to make by-laws on the following subjects:

(8.) To suppress and punish vagabonds, beggars, prostitutes and disorderly persons.

This provision can only be considered valid as permitting by-laws to be made in accordance with the laws of Canada on the subject.

(28.) To authorize the seizure and confiscation of certain staple articles brought into the city for sale or otherwise on account of deficiency in measure, weight or quality, or for any other good and sufficient reason, and for regulating the weighing and measuring of all cordwood, coal, salt, grain, lime and hay brought into or sold in the city by strangers, and for other purposes.

The observation made as to subsection (8) applies to this subsection, and great care should be taken that no by-law made under such an enactment shall either be in conflict with the Dominion legislation in respect to trade and commerce, weights and measures, &c., or shall make any different provisions from such legislation.

(49.) To regulate the number and dimensions of the arches to be erected in the construction of bridges across the River Yamaska.

The laws relating to shipping and navigation are under the control of the Parliament of Canada alone, but it may be that regulations could be made with validity, in relation to the arches of bridges in conformity with these laws, and in relation to rights of persons and property which may be affected by such arches.

(61.) To prevent thefts and depredations at fires and for punishing any person who resists or illtreats any member or officer of the council while in the execution of the duty assigned to him by virtue of any by-law made to prevent the dangers of fire.

This would seem to be an infringement upon the power of the Canadian Parliament to exclusively legislate upon the question of criminal law, but it may be designed to enable preventive regulations to be made which would not be objectionable.

(76.) To regulate the measuring of all lumber and shingles brought within the city for sale; to regulate and determine whether any other articles purchased or sold within the city shall be weighed or measured.

This subsection appears to infringe on the exclusive powers of the Canadian legislature in respect to trade and commerce and on existing legislation.

(86.) To prevent the obstruction of the streets by cars or trains of cars, locomotives or other engines of the Grand Trunk or any other railway company, and determining what precautions the conductors, engine drivers or stokers of such trains, cars or engines shall take, when crossing, or about to cross, the streets in the said city, and imposing either on the said servants of said railway company or of any other railway company or on the company itself, a fine for each infringement of the by-laws passed for that purpose.

This is an infringement on the exclusive powers of the Canadian Parliament to make laws in relation to inter-provincial railways and other railways declared by the Parliament to be for the general advantage of Canada.



Sections 183 and 191 of chapter 83, provide as follows :—

“183.—To the council alone shall appertain the right of remitting the whole or any part of any fine belonging to the city, as well as the costs of the suit occasioned by the prosecution for the fine.”

“191.—All the fines and penalties imposed in virtue of this Act, or any by-law made by the city council of St. Hyacinthe, shall be recovered for the use of the city council and form part of its funds.

“It shall be lawful for the council and the mayor of the city of St. Hyacinthe, to remit any fine or penalty which he shall think proper to remit.

“The secretary-treasurer or the mayor is hereby authorized to accept the payment of all such fines and penalties and to fix the amount thereof, which shall not exceed the half of the maximum of such penalty imposed, either by this Act, or by by-laws of the council, all the costs of the parties who may wish to pay such fines or penalties and costs, without awaiting the decision of the court, or even without having been sued.”

These sections so far as they give the council power to remit the penalty for violation of any criminal statute are *ultra vires*.

The Crown in the exercise of its royal prerogative, and your Excellency under the royal instructions, can alone exercise the power to remit such fines even where the proceeds of such fines may belong not to the Crown, but to a province or a municipality.

This enactment would, however, be ineffective to take away the authority of the executive.

All of the municipal Acts above mentioned give very extensive powers of taxation, authorizing the taxation of business persons, manufacturers, callings, trades and professions, which are, or may be exercised, or introduced, into the town or city.

The Privy Council in a late case of *Lambe vs. Bank of Toronto* (12 L. R. App. cases p. 575) decided that a provincial legislature may impose direct taxes on commercial corporations, and, if so, it may of course authorize a municipality to do so. If the taxes authorized by ch. 11 of the Acts of the last session of the Quebec legislature, namely, the imposition of direct taxes upon commercial corporations, are in force in each of these towns and if, in addition, all trades, manufactures and callings, are taxed under the authority of local by-laws, in pursuance of these Acts of incorporation the trade and commerce of the community may be seriously impaired.

This is a matter, however, for the consideration of the provincial legislature.

The undersigned while being of opinion that several of these enactments are objectionable from a constitutional point of view, for the reasons stated, and should be so amended as to remove the objections he has referred to, nevertheless recommends that they be left to their operation without such amendment being insisted upon, excepting as to the provision enabling municipal authorities to remit fines and penalties.

Chap. 99.—An Act to incorporate the Napierville Junction Railway Company.

Chap. 101.—An Act to incorporate the Portage du Fort and Bristol Branch Railway Company.

Chap. 107.—An Act to incorporate the Philipsburg Junction Railway and Quarry Company.

Section 17 of the first Act, section 19 of the second, and section 16 of the third of these Acts, contain a provision in reference to aliens permitting them to have equal rights with British subjects in railway stock.

The attention of your Excellency has frequently been called to these provisions, which are infringements upon the exclusive right of the Dominion Parliament to legislate upon that subject.

The matter, however, is not of sufficient importance to authorize the disallowance of the Acts, and he recommends accordingly.

Chap. 103.—An Act to incorporate the St. Maurice Railway Company.

Section 15 of this Act may be beyond the competence of a provincial legislature, the Dominion Parliament alone having legislative jurisdiction in respect to bills of exchange and promissory notes. Notwithstanding, however, this objection to the Act, the undersigned does not recommend any interference with it.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

*His Honour The Lieutenant Governor of Quebec to the Secretary of State.*

GOVERNMENT HOUSE, QUEBEC, 7th March, 1889.

SIR,—I have the honour to forward you herewith for the consideration of his Excellency the Governor General a copy of the report of the President of the Executive Council in answer to the report of the Honourable Minister of Justice, dated the 29th January last, approved by his Excellency the Governor General in Council on the 29th January last, respecting certain Acts passed by the legislature of Quebec in 1888.

I have, &c.,

A. R. ANGERS,

*Lieutenant Governor.*

*REPORT of the Honourable the President of the Executive Council of Quebec, approved by His Honour the Lieutenant Governor in Council on the 7th March, 1889.*

*To His Honour the Lieutenant Governor of the Province of Quebec.*

May it please your Honour,—I have carefully examined the report of the Honourable Minister of Justice dated the 18th January last and forwarded to your Honour on the 4th February last, respecting certain Acts passed by the legislature of this province in 1888, and I have the honour to submit the following remarks on each of the chapters of the said Act mentioned in such report.

1. Chapter 2, intituled: "An Act respecting the Revised Statutes of the province of Quebec."

The Minister of Justice states that it is not at present advisable to report specially on this Act, and reserves the right to do so later on. I have therefore nothing to say on the subject at present.

2. Chapter 17, intituled: "An Act to amend and consolidate the laws relating to Fisheries." Although he makes some remarks against the Act, the Minister of Justice concludes by saying that he does not recommend that the power of disallowance be exercised.

3. Chapter 30, intituled: "An Act to amend the Municipal Code."

The Minister of Justice objects to section 11, which reads as follows:—

"11. Article 844 is amended by adding at the end thereof the following:—

"Every person who, for the purpose of obtaining a supply of ice makes an opening or hole in the ice of a river upon which a public road is traced, shall surround such opening or hole by means of a fence or barrier sufficient to prevent any accident, under penalty of a fine not less than five nor more than fifty dollars, without prejudice of the recourse in damages of any person injured thereby."

The Honourable Minister of Justice is of opinion that this section should be repealed, and recommends that, until the legislature of Quebec has had an opportunity of so doing, no further action be had in respect thereto.

I regret to have to differ from the opinion of the Honourable Minister of Justice. This section is perfectly constitutional and legislates only upon a matter of police within the scope of our legislature.

All municipal roads, including roads on the ice or rivers are under the control of the municipal authorities in this province, in virtue of articles 748 and 849, and municipal corporations are responsible for accidents upon all these roads subject to the reservation in article 849 which reads as follows: "Corporations are not responsible for accidents or damages occasioned by the breaking of the ice on roads laid out and maintained by them on rivers or other pieces of water."

The object of this amendment to the Municipal Code is for the safety of the public on highways which the provincial authorities have the right to provide for.

In support of this opinion I take the liberty of citing the following judgments which establish the rights of the provinces in local matters:—*Poulin vs. The Corporation of Quebec*, 9 Can. S. C. R. p. 185; *Hodges vs. The Queen*, Privy Council 9 App. Cas. 117.

In these two cases it was decided that the local legislatures have the right to regulate, for police purposes, the sale of spirituous liquors, although the Supreme Court, in *Fredericton vs. The Queen*, and the Privy Council, in *Russell vs. The Queen*, have decided that the total prohibition of the sale of such liquors is within the jurisdiction of the Federal Parliament.

In the present instance, it is merely a matter of police. The fact that a federal law makes a misdemeanour of the neglect of certain people who endanger public safety, cannot assuredly take away from the provincial authorities the right of causing to be removed on penalty of a fine, obstacles which endanger the lives of citizens on ice-roads on rivers.

4. Chapter 73, "An Act to incorporate the Chambly Manufacturing Company."

The Honourable Minister of Justice states that this company is incorporated for the purpose, among other things, of erecting and maintaining dams along the rapids of the River Richelieu, &c., but he adds that by section 6 it is provided that "the company shall not erect any dams across the River Richelieu, nor do anything affecting the navigation of the said river or the Chambly Canal, without the authority or consent of the Government or of the Parliament of Canada first obtained."

However, the Honourable Minister of Justice adds, in substance, that had the intention of the legislature in incorporating this company been merely to associate the corporation, and give it the necessary authority either by Dominion legislation or the proper authorities, for carrying on the enterprise for which they were incorporated, there could have been no objection; but the evident intention of the Act appears to be otherwise. In fact it confers absolute rights to the company in respect to the rivers, dealing with a subject wholly within the powers of the Canadian parliament.

The Minister of Justice is, therefore, of opinion that, as this Act trenches upon the federal jurisdiction as above mentioned, it should be amended, and he recommends that it remain in force until the legislature of Quebec has had an opportunity to make such amendment.

Here again I regret that I cannot agree with the Honourable Minister of Justice. His conclusion is not acceptable, and does not in any wise follow from the premises. Section 6 is sufficient to protect the powers of the federal government, since it declares that the company can do no act affecting the navigation of the Chambly River or Canal, without the previous authority and consent of the Government or Parliament of Canada.

5. Chapter 75, intituled: "An Act to amend the charter of the Windsor and Brompton Bridge Company."

After discussing this Act, which is only an amendment to the Act 36 Victoria chapter 77, the Minister of Justice concludes by saying that this Act should not be disallowed, because the original Act which it amends was not disallowed, and there



are no reasons of public necessity for disallowing the Act. This official statement puts an end to all difficulties for the present.

6. Chapter 76, intituled: "An Act to incorporate the Ste. Clothilde de Horton Bridge Company."

The Honourable Minister of Justice objects to this Act because the river on which the bridge is to be built is navigable, and he declares that the Act is contrary to chapter 92 of the Revised Statutes of Canada.

As a question of fact, I am told that the river is not navigable, consequently the bridge does not come under the federal Act. However, to obviate all difficulties, the undersigned recommends that the Provincial Secretary be recommended to communicate to the company the objection raised by the Minister of Justice, in order that it may reply, but he does not consider it advisable to recommend anything else.

7. Chapter 83, intituled: "An Act to amend and consolidate the Acts incorporating the town and city of St. Hyacinthe and the Acts amending the same, and to convey further powers upon the mayor and council of the city of St. Hyacinthe."

The Honourable Minister of Justice objects to the clauses which give the city council authority to punish vagabonds, beggars, prostitutes and disorderly persons, which authorize the seizure and confiscation of certain goods brought to market for sale and which may be of deficient quantity or quality. The Minister of Justice is of the opinion that these clauses affect Dominion laws on trade, weights and measures.

I do not share the opinion of the Honourable Minister of Justice and I think that these are matters of police, which are exclusively within the jurisdiction of the legislature and of municipal corporations. Similar provisions applicable to all municipalities governed by the Municipal Code have existed since 1871, and their constitutionality has never been questioned, although many suits taken act under them.

The Honourable Minister of Justice also objects to the clause which allows the town council to regulate the number and size of the arches of the bridges to be built over the Yamaska River, opposite the city, on the principle that this is a violation of the laws of navigation, which are under the exclusive control of the Parliament of Canada.

I do not share this opinion. The River Yamaska, opposite the city where the bridges are, is not navigable.

But here again I suggest that these objections be communicated by the Provincial Secretary to the municipal authorities of St. Hyacinthe in order that they may reply and protect themselves.

The Honourable Minister of Justice also objects to several other clauses affecting police matters within the limits of the city, and which allow the council to pass by-laws to prevent the obstructing of its streets by railway trains, by cars or locomotives of the Grand Trunk or any other railway company. The objection of the Minister of Justice is that this trenches upon federal powers and that the federal government alone can regulate these matters.

Notwithstanding all the respect which I have for the opinion of the Honourable Minister of Justice, I cannot share it, and I am compelled to say that the law is perfectly constitutional.

Finally, the Honourable Minister of Justice objects to the power granted to the municipal authorities at St. Hyacinthe to remit fines, in whole or in part, imposed upon persons who infringe municipal by-laws, on the principle that such fines belong to the federal authorities, and that to remit them is to exercise a royal prerogative.

This objection, I may be permitted to say, cannot be serious as regards fines incurred for violation of provincial laws or by-laws made under such laws; the provincial legislature alone have the right to say to whom such fines shall belong, and, consequently, may remit them.

As to fines for infringements of federal statutes there is no question of them here, and any remission which might be made of them under a local statute would certainly be of no value. But in order to obviate all difficulties, I again suggest that this be made known to the municipal authorities in order that they may protect themselves.

8. Mention is also made of the following Acts :

Chapter 67, intituled "An Act to incorporate the Drummondville Industrial Company" ;

Chapter 88, intituled "An Act to incorporate the town of Drummondville" ;

Chapter 89, intituled "An Act to amend the Act 46 Victoria, chapter 82, incorporating the town of Hochelaga now the town of Maisonneuve" ;

Chapter 90, intituled "An Act to incorporate the town of Coaticook into a town with a special charter" ;

But as the Honourable Minister of Justice states that all these Acts, which either incorporate towns or amend Acts incorporating them and the provisions thereof are more or less beyond the powers of the legislature of Quebec, but without indicating any particular provisions, there is no need to answer objections which are so general.

9. Chapter 99, intituled "An Act to incorporate the Napierville Junction Railway Company."

Chapter 101, intituled "An Act to incorporate the Portage du Fort and Bristol Branch Railway Company."

Chapter 107, intituled "An Act to incorporate the Philipsburg Junction Railway and Quarry Company."

The Honourable Minister of Justice objects to section 17 of chapter 99, to section 19 of chapter 101, and section 13 of chapter 107, allowing aliens to hold shares in the said railway companies, and to enjoy the same rights as British subjects in this respect.

The Honourable Minister of Justice says that he has frequently called his Excellency's attention to similar provisions which are evidently contrary to the right and privilege of the Parliament of Canada to legislate on the subject, but he adds, however, that the question is not of sufficient importance to justify the disallowance of the Acts in question.

I regret that I cannot share this opinion of the Honourable Minister of Justice. This is purely and simply a question of ownership and of civil rights, and, consequently, one within the jurisdiction of the local legislature. The fact of naturalization being within the province of the Federal Parliament is of no importance.

The regulation of the business of insurance lies within the jurisdiction of the Federal Parliament; this has not prevented the courts of Ontario, the Supreme Court, and the Privy Council from deciding that the regulating of contracts affecting such trade is within the jurisdiction of local legislatures. (*Citizens Ins. Co. vs. Parsons.*)

10. Chapter 103, intituled : "An Act to incorporate the St. Maurice Railway Company."

The Honourable Minister of Justice objects to section 15 which allows the company to sign promissory notes or bills of exchange, but, notwithstanding this objection, he does not deem it advisable to recommend its disallowance.

Here again I cannot share the opinion of the Minister of Justice.

The Federal Parliament alone has the right to legislate as to promissory notes, but when the local legislature incorporates a company and specifies what contracts it may make, it has certainly a right to say whether it can give notes, and that is a question of ownership and of civil rights. (*Citizens Ins. Co. vs. Parsons.*)

Such is, your Honour, a faithful summary of the objections made by the Minister of Justice to the Acts in question, with my replies to, and remarks upon, such objections.

I am of opinion that we should forward the special objections which affect certain corporations and do nothing further, at least for the moment, merely contenting myself with regretting this systematic and uncalled for interference by the federal authorities with the legislation of this province.

The whole respectfully submitted,

HONORÉ MERCIER,  
Premier.

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CORRESPONDENCE, PETITIONS, REPORTS, &c., RESPECTING THE JESUIT ESTATES ACT,  
51-52 VICTORIA, CHAPTER 16.

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*His Honour the Lieutenant-Governor of Quebec to the Secretary of State.*

GOVERNMENT HOUSE, QUEBEC, 15th October, 1888.

SIR,—Among the Acts of the last session of the legislature of this province, of which copies were transmitted to you the 8th of August last, according to law, is found the one intituled "An Act relating to the question of the settlement of the Jesuits' Estates," chapter 13, of 51-52 Victoria.

My government for urgent reasons desire to know without delay, the intention of the advisers of his Excellency the Governor General, as to the exercise of the right of disallowance with reference to this Act. Under these circumstances, I request you to inform me of their intention as soon as possible.

I have, &c.,

A. R. ANGERS,  
*Lieutenant-Governor.*

REPORT of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 19th January, 1889.

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 16th January, 1889.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Acts of the legislature of the province of Quebec passed in the session held in the year 1888, the titles of which Acts are mentioned in the schedule hereto,\* respectfully recommends that they be left to their operation.

JOHN S. D. THOMPSON,  
*Minister of Justice.*

*Petition from the Presbytery of Montreal, dated 12th October, 1888, to the Governor General in Council.*

*To His Excellency the Governor General in Council assembled :*

The memorial of the undersigned humbly sheweth :—

That the presbytery of Montreal, of the Presbyterian Church in Canada, did, at a meeting held in the David Morrice hall, Montreal, on the third day of October, one thousand eight hundred and eighty-eight, adopt the subjoined resolutions, which we are instructed to forward for the consideration of your Excellency in Council. We beg respectfully to call the attention of your Excellency in Council to the important subject embraced in said resolutions; and we crave that such action be taken in the premises as to your Excellency in Council may seem meet.

And your memorialists, as in duty bound, will ever pray.

JAMES FRASER, Moderator,  
JAMES PATTERSON, Presbytery Clerk,  
D. H. MACVICAR, D.D., LL.D.,  
ROBERT CAMPBELL, D.D.,  
D. COUSSIRAT, B.A., B.D.,  
JOHN CAMPBELL, M.A., S.T.P.,  
RIEUL P. DUCLOS,  
DAVID W. MORRISON,

*Members of Committee.*

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\* See ante page 377.



## RESOLUTIONS.

Whereas, by recent legislation of the province of Quebec, a large sum of money was voted out of what is known as the "Jesuits' Estates," which upwards of a century ago became public property, and has been since looked to as available for educating the people of the province, irrespective of race or religious belief—\$400,000 to the Society of Jesus, and \$60,000 to the Protestant Committee of the Council of Public Instruction ;

The presbytery of Montreal avails itself of this opportunity of expressing strong disapproval of the same, and of declining, so far as it has a right to voice public opinion, to be a party to it.

The presbytery further expresses astonishment that the provincial legislature, not content with granting powers of incorporation to the Jesuits, should have gone out of its way to foster, in a mixed community, a society which proved itself the enemy of civil and religious liberty all over the world, and which even the governments of Roman Catholic states have found it necessary to expel

The presbytery also protests earnestly against the action of the Quebec legislature in violating the principle of religious equality which was established in Canada many years ago, by bestowing public money upon a society of a distinctively religious character, like that of the Jesuits.

Therefore, be it resolved, that this presbytery memorialize the Governor General in Council to take the foregoing preamble and resolutions into consideration and adopt such measures as will protect the rights of the people of this province in the premises.

*Petition from the Evangelical Alliance of the Dominion of Canada, to His Excellency the Governor General in Council.*

*To His Excellency the Right Honourable Frederick A. Stanley, Baron Stanley of Preston, G.C.B., Governor General of the Dominion of Canada, in Council :*

The petition of the undersigned humbly sheweth ;

That whereas at a meeting of the Evangelical Alliance for the Dominion of Canada, held in the city of Montreal, in the month of October, in the year of Our Lord one thousand eight hundred and eighty-eight, certain matters touching the interests of the several Protestant churches were taken into serious consideration, among which was "The Act respecting the Jesuits' Estates," passed by the legislature of the province of Quebec and assented to on the 12th of July, 1888, now lying before your Excellency in Council for consideration ;

And whereas "the estates of that (the Jesuit) order were originally granted by the King of France for the purpose of educating the natives of the country," and the Jesuits were merely depositaries thereof for the purposes of the education of the youth of the province ; (*Address to His Excellency from House of Assembly, L.C., A.D. 1800, and address to King from the same in 1825.*)

And whereas the order of the Jesuits was suppressed in France in 1761 and its property taken by the King for the purposes of education ;

And whereas the royal instructions to the Governor General of Canada in 1774 directed "that the Society of the Jesuits should be suppressed and dissolved and no longer continue a body corporate and politic, and that all their rights, privileges and property should be vested in the Crown ;"

And whereas the House of Assembly for the province of Quebec repeatedly in 1800, 1812 and 1825, petitioned the King or his representative that the said estates might be devoted according to their primitive destination, for the education of the youth of this country, and be placed at the disposal of the legislature for that purpose ;

And whereas on the 7th of July, 1831, Lord Goderich, then Secretary for the Colonies to King William IV., addressed a despatch to His Majesty's representative in Quebec in which he stated that "the Jesuits' Estates were, on the dissolution of

that order, appropriated to the education of the people," and further, "that the revenue which might result from that property should be regarded as inviolably and exclusively applicable to that object"; and moreover, "that the King, cheerfully and without reserve, confided the duty or the application of those funds for the purposes of education to the provincial legislature"; (*Appendix to Journals, House of Assembly. L. C., 1824, Vol. 33.*)

And whereas the disposal of the said estates has been from time to time impeded by the "energetic representations" of the authorities of the Roman Catholic Church, asserting a claim to their "ownership"; (*Statutes of Quebec, 1888, pp. 43, 44.*)

And whereas the government of the province of Quebec, in the negotiations with the representative of the present order of the Jesuits in the province of Quebec forming the basis of the Jesuits' Estates Act of 1888, expressly declared "it did not recognize any civil obligation, but merely a moral obligation, in this respect," and proceeded to treat on the amount and terms of compensation in money on condition of receiving a full renunciation of all further claims on the said estates; (*Ibid., p. 49.*)

And whereas by the said Jesuits' Estates Act of 1888, the Lieutenant Governor in Council is authorized to pay the sum of four hundred thousand dollars "out of any public money at his disposal" for the purpose of such compensation, "to remain as a special deposit until the Pope has ratified the said settlement and made known his wishes respecting the distribution of such amount in this country; (*Ibid., p. 50.*)

And whereas the said Jesuits' Estate Act recognizes powers in the Holy See that are perilous to the supremacy of the Queen, in thus requiring its consent to legislation within her dominions, and the application of public funds, and in accepting such terms as "the Pope allows the government to retain the proceeds of the sale of the Jesuits' Estates as a special deposit to be disposed of with the sanction of the Holy See;" (*Ibid., p. 47.*)

And whereas your petitioners contend that not even a "moral obligation" exists to make "compensation" for property duly and lawfully taken by the Crown, to the extinction of all "civil obligation";

And whereas, from the whole tenor of the negotiations on this matter, it is to be surely expected that the Holy See will apportion at least a large share of the aforementioned \$400,000 to the order of the Jesuits which does not represent the Roman Catholic Church or population of Quebec as a whole but itself alone, and is confined by law to two archdioceses and one diocese; (*Quebec Statutes, 1887, p. 66.*)

And whereas no stipulation is made that the said \$400,000 shall be devoted to public education or any account be rendered to the government of the use made of such public money;

And whereas any further proceeds of the sale of the Jesuits' Estates are not secured for the purposes of education, but pass into the general revenue of the province;

And whereas, finally, the appropriation in the said Jesuits' Estates Act of the sum of sixty thousand dollars to be invested by the Protestant Committee of the Council of Public Instruction for the benefit of Protestant institutions of superior education, though urgently needed and justly due, though unlike the \$400,000 available for the entire population of one class alike, and though, by contrast again to be administered under public accountability, is liable nevertheless to be interpreted as making the Protestant community consenting and approving parties to that appropriation of the \$400,000 to which the grave objections above recited have to be made:

Therefore, that your petitioners, being duly authorized on this behalf by the aforesaid Evangelical Alliance, do enter their solemn protest against the Act in question being carried into effect.

And humbly pray that it may be disallowed by your Excellency in Council as provided by the British North America Act of 1867.

JNO. MACDONALD, *President.*  
WM. JACKSON, *Secretary.*

MONTREAL, 10th January, 1889.



*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 22nd January, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th January, 1889.

*To His Excellency the Governor General in Council :*

The undersigned, to whom has been referred a petition to your Excellency from the Dominion Evangelical Alliance, and also a petition from the Presbytery of Montreal in connection with the Presbyterian Church in Montreal, praying for the disallowance of an Act passed at the last session of the legislature of the province of Quebec, entitled: "An Act respecting the settlement of the Jesuit Estates," has the honour to report as follows:—

Before the petitions in question came before him for his consideration the undersigned had already recommended to your Excellency, that the Act in question should be left to its operation.

The memorials referred to have not convinced the undersigned that that recommendation should be changed. The subject-matter of the Act is one of provincial concern only, having relation to a fiscal matter entirely within the control of the legislature of Quebec.

The undersigned respectfully recommends that a copy of this report, if approved, be sent to the petitioners for their information.

JOHN S. D. THOMPSON,  
*Minister of Justice.*

*Petition from the Presbytery of Miramichi, N.B., to Right Hon. Sir John Macdonald.*

THE MANSE, KINGSTON, KENT CO., N.B., 19th Jan., 1889.

RIGHT HONOURABLE SIR,—I have the honour to forward through you to the government of the Dominion of Canada a petition from the Presbytery of Miramichi, of the Canadian Presbyterian Church, in reference to the grant recently voted by the Quebec government. By bringing it under the notice of your government, you will greatly oblige

Your humble servant,

WM. HAMILTON.

Unto the Honourable Sir John A. Macdonald, and other members of the government of the Dominion of Canada, the petition of the Miramichi Presbytery in connection with the Presbyterian Church in Canada, humbly sheweth :

Whereas a grant of four hundred thousand dollars has been made by the government of Quebec on behalf of the educational institutions in that province under the control of the Jesuits ;

And whereas the granting of such a sum from the common exchequer of the province to a particular denomination is manifestly unjust to the residue of the community, and imposes upon the Protestants of Quebec a burden which is irksome and unfair ;

And whereas the said grant is calculated to aid the recipients in the dissemination of principles which, in the opinion of several of the governments of Europe, are destructive of the peace and well-being of the nation ;

May it therefore please your honourable government to veto the Act conferring said grant : and your petitioners will ever pray.

In name and by authority of presbytery.

WM. HAMILTON, *Moderator pro tem.*

N. McKAY, *Clerk.*

KINGSTON, KENT CO., 15th January, 1889.



*Petition from Inhabitants of the Village of Huntingdon, P. Q., and vicinity, to His Excellency the Governor General.*

*To His Excellency the Right Honourable Frederick A. Stanley, Baron Stanley of Preston, G.C.B., Governor General of the Dominion of Canada, &c., &c., &c., in Council.*

The petition of the inhabitants of the village of Huntingdon and its vicinity in the province of Quebec, humbly sheweth :

That by the British North America Act of 1867, section 93, subsection 3, it is provided that "an appeal shall lie to the Governor General in Council from any Act or decision of any provincial authority affecting any right or privilege of the Protestant minority of the Queen's subjects in relation to education."

That a case for such an appeal has arisen in the passing by the legislature of the province of Quebec in 1888, of an Act respecting the settlement of the "Jesuits Estates," whereby a large and valuable property pledged by the "Crown" inviolably and exclusively to public education, is diverted from that object and made over to the general public funds of the province.

That as the Jesuits' Estates were given over by the Crown to be held in perpetuity for the education of the youth of Lower Canada, your petitioners protest alike against their sale and the distribution of the proceeds among sectarian institutions.

Wherefore your petitioners earnestly pray your Excellency to intervene in such manner as may to your wisdom seem best, in order that justice may be done in the premises.

And your petitioners, as in duty bound, will ever pray,  
In name and by order of the petitioners.

ANDREW McCALLUM, *Chairman.*  
JAMES WATSON, *Secretary.*

Given at Huntingdon, Quebec, 27th February, 1889.

*Petition from L. O. District Lodge No. 4, Ottawa, to His Excellency the Governor General.*

*To His Excellency the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, Governor General of Canada.*

MAY IT PLEASE YOUR EXCELLENCY,—

By the authority and acting on behalf of the members of Loyal Orange District Lodge No. 4, Ottawa, loyal subjects of Her Most Gracious Majesty, the petition of the undersigned humbly sheweth :

That whereas your petitioners have heard with surprise and alarm that on the twelfth day of July, 1888, an Act entitled : "The Act respecting the Jesuits' Estates," which had been passed at its last session by the legislature of the province of Quebec, received the assent of his Honour the Lieutenant-Governor. That the Act authorizes the Lieutenant-Governor of that province to pay out of any public money at his disposal the sum of \$400,000 for the purpose of compensating the present Society of Jesus for certain estates which had formerly been given in trust by the Kings of France, for the education of the inhabitants of Canada, to the former Society of Jesus, but which, in consequence of the dissolution of the said society in 1774, had been confided to the provincial legislature, by command of His late Majesty King William IV., in the year 1831, for the purpose of education, and that the revenue resulting from the estates might be recorded as inviolably and exclusively devoted to that object.

That the said Act furthermore provides "that the said sum of \$400,000 shall remain as a special deposit until the Pope has ratified the said settlement and made

known his wishes respecting the distribution of such amount in this country," thereby recognizing the authority of a foreign bishop in the disposal of public funds derived from the taxation of the whole population of the province of Quebec, Protestant as well as Roman Catholic, in contempt of the supremacy of the Crown, as well as of the rights of the rising generation of Quebec.

That the present Society of Jesus, lately incorporated in Quebec, can in neither a legal or a moral sense be considered as the representative of the former society of the same name, which was dissolved by a bull of Pope Clement XIV. many years before the oldest member of the present society was born.

That the interference of the Jesuits in political affairs and their evil influence on public and private morality, has within the last 200 years been found so unsupportable wherever established, as to compel the enactment of laws repelling them from almost every European country, Roman Catholic as well as Protestant; and that in Quebec itself the Act for their incorporation passed by the provincial legislature in 1887, was most strenuously opposed by the highest Roman ecclesiastic in Canada, and by many of the most learned, devoted and loyal clergymen and laymen of the Roman faith in Quebec.

That we protest most respectfully, but most earnestly, against any grant of the public money of Canadians to men who maintain in their authorized text books that no obedience is due by Christians to the laws of so-called heretical sovereigns, meaning by that term, Protestant monarchs like our present Gracious Majesty.

That, apart from these weighty considerations, no grant of public money has for many years been made to any denominational associations, and the initiation of a contrary policy in our mixed community would logically and inevitably lead to constant disputes and struggles for the endowment from the public treasury of every kind of religious institutions.

We, therefore, respectfully request your Excellency that, taking these and other weighty reasons into your serious consideration, you may be pleased to refuse your assent to the Act of the legislature of Quebec respecting the Jesuits' Estates.

And we, your petitioners, as in duty bound, will ever pray.

WILLIAM CHERRY, *District Master.*

T. H. WHITE, *District Secretary.*

*Petition from the Guelph Ministerial Association to His Excellency the Governor General.*

*To His Excellency the Governor General in Council.*

The petition of the Guelph Ministerial Association, humbly sheweth:—

1. That the said association is composed of the clergymen of the different Protestant denominations in the city of Guelph, and the adjacent neighbourhood with the exception of those of the Episcopal Church.

2. That they thus represent a large and influential portion of the inhabitants in their immediate locality.

3. That from their official character and work as ministers of the Gospel and from their position as members of civil society they are bound to take an interest in everything, whether spiritual or temporal, affecting the welfare of the community, and to exert their influence in support of that which is favourable to these, and against that which is unfavourable.

4. That in their deliberate judgment the recent passing by the provincial legislature of Quebec of what is known as the Jesuits' Estates Bill is ominous of danger to the welfare not only of that province but of the Dominion at large, (1) as it must be supposed that the different branches of that order throughout the land will be encouraged and strengthened by it: (2) the past history of the order and the fact that they have been condemned by popes, and expelled from their territories by kings and civil rulers, proves that they have been found hurtful to society: (3) the Bill is an invasion

of the prirogatives of our beloved Queen, whose representative you are : (4) it gives a state recognition to one of the orders of a religious body, contrary to a well understood article of our constitution that there is no State Church in Canada : (5) it diverts a large sum of state money from the immediate direction and control of state authority and places it at the disposal of a foreign sovereign, the Pope, who claims to be a temporal prince as well as an ecclesiastical ruler.

Your petitioners would, therefore, humbly pray your Excellency to take these premises into consideration and exercise your prerogative in disallowing the aforesaid Bill.

And your petitioners as in duty bound shall ever pray.

Signed in name, and by authority of the Guelph Ministerial Association.

WM. C. WEIR, *President*.

ROBERT TORRANCE, *Secretary*.

GUELPH, 16th March, 1889.

*Petition from Executive Committee of Evangelical Alliance for Dominion of Canada :*

*To His Excellency the Right Honourable Frederick A. Stanley, Baron Stanley of Preston, G.C.B., Governor General of the Dominion of Canada, &c., &c., in Council.*

The petition of the Executive Committee of the Evangelical Alliance for the Dominion of Canada, humbly sheweth :—

That your petitioners having been apprised of the appeal made to your Excellency as allowed by the British North America Act, 1867, by the Protestant Ministerial Association of Montreal, and divers other Protestant inhabitants of the province of Quebec, against the wrong done to them by the Quebec "Jesuits Estates Act" of 1888. "Whereby," as they truly allege, "a large and valuable property pledged by the crown, inviolably and exclusively to public instruction, is diverted from that object and made over to the general public funds of the province," in which appeal they further represent the \$60,000.00 appropriated by the said Act to Protestant superior education is a most inadequate instalment of the share of the Protestant community in the educational fund arising from the said estates," and that to replace the fund thus diverted, either the whole community, Protestant and Roman Catholic must be subject to additional taxation, or the work of education must seriously suffer.

Do earnestly support the prayer of the said petition in appeal, to wit : that your Excellency intervene in such a manner as to your wisdom may seem best, in order that justice may be done in the premises."

And your petitioners as in duty bound will ever pray.

JOHN MACDONALD, *President*.

ALEXANDER CAMPBELL, *Secretary*.

*Lord Knutsford to Lord Stanley of Preston.*

DOWNING STREET, 21st March, 1889.

MY LORD,—I have the honour to transmit to you for consideration of your ministers a copy of a memorial from the Protestant Alliance protesting against Her Majesty's assent being granted to the Jesuits' Estates Act of the legislature of the province of Quebec.

I have caused the Alliance to be informed that the question of allowing or disallowing the Act referred to is one which rests entirely with you, acting on the advice of your responsible ministers.

I have, &c.,

KNUTSFORD.



*Petition from the Protestant Alliance.*

*To the Right Honourable Lord Knutsford, Her Majesty's Principal Secretary of State for the Colonies.*

The memorial of the Committee of the Protestant Alliance sheweth.

That, whereas an "Act respecting the Jesuits' Estate" (1888) has been passed by the legislature of the province of Quebec, and is now awaiting the assent of the Governor General of the Dominion of Canada.

And whereas following up the provisions of the Quebec Act of 1774, royal instructions were forwarded to the Governor General of Canada, directing "that the Society of the Jesuits should be suppressed and dissolved, and no longer continue a body corporate and politic, and that all the rights, privileges and property should be vested in the Crown."

And whereas by the said Jesuits' Estates Act of 1888, passed by the provincial legislature of Quebec, the Lieutenant-Governor in Council is authorized to pay the sum of four hundred thousand dollars out of any public money at his disposal, "as a compensation to the Jesuits for the property and estates, their claim to which was disallowed by the authority aforesaid," and whereas it is provided by said Act that such compensation is to remain as a special deposit until the Pope has ratified the said settlement, and made known his wishes respecting the distribution of such amount. (Statutes of Quebec, 1888, p. 50.)

And whereas the said Jesuits' Estates Act recognizes powers in the Pope that are perilous to the supremacy of the Queen, in thus requiring his consent to legislation within Her Majesty's dominions, and to the application of public funds.

And whereas it is a surrender of the authority of the Crown, and an acknowledgment of papal supremacy to accept such terms from the papacy as that "the Pope allows the government to retain the proceeds of the sale of the Jesuits' estates as a special deposit to be disposed of with the sanction of the Holy See, Cardinal Simeoni. (Statutes of Quebec, 1888, p. 47.)

Therefore your memorialists do enter their solemn protest against the granting of any assent by the Governor General of the Dominion of Canada, acting as the representative of the Queen, to such Act of the Quebec legislature, and humbly pray that such Act may be disallowed, and that measures be taken by Her Majesty's government, on the part of the Crown, to prevent any such Act being carried into effect.

Signed on behalf of the committee and members of the Protestant Alliance.

T. MYLES SANDY'S, Lieut.-Col.,  
Chairman.

*Memorandum for the Honourable the Privy Council of Canada, from the Governor General's Secretary.*

The undersigned by direction of his Excellency the Governor General, has the honour to transmit to the Council a petition which he has received from "The Evangelical Alliance for the Dominion of Canada," and which his Excellency is requested to transmit for Her Majesty's consideration.

The Governor General anticipates the advice of the Privy Council that the petition in question shall be duly forwarded to Her Majesty through the Secretary of State for the Colonies, and he desires to know whether they advise that it should be accompanied by any official memorandum or letter which would show the position taken by the Dominion government on the subject matter of the petition and which might be included in any papers to be laid before the Imperial Parliament, either by command or otherwise.

By command.

CHARLES COLVILLE, Captain,  
Governor General's Secretary.

*Lord Stanley of Preston to Lord Knutsford.*

OTTAWA, 21st May, 1889.

MY LORD.—I have the honour to transmit to your Lordship a petition from the Evangelical Alliance for the Dominion, together with a copy of an approved minute of the Privy Council thereon.

I have, &c.,

STANLEY OF PRESTON.

*CERTIFIED COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 16th May, 1889.*

The Committee of the Privy Council, upon the report of the Minister of Justice, to whom was referred a memorandum from your Excellency's Secretary, transmitting to Council a petition which your Excellency had received from the Evangelical Alliance of the Dominion of Canada, and which your Excellency had been requested to transmit to Her Majesty's government, recommend that the petition in question be duly forwarded to Her Majesty, through her Secretary of State for the Colonies, with the intimation from your Excellency that should Her Majesty's government desire it, your Excellency's advisers will be prepared at any time to state the position which they have taken with regard to the statute of Quebec to which the petition relates, and to justify the advice which they gave to your Excellency to leave that statute to its operation, in accordance with which an intimation was given in January last to his Honour the Lieutenant-Governor of Quebec that the Act would be so left to its operation.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,

*Clerk Privy Council.*

*Petition from the Evangelical Alliance for Canada.*

*To the Queen's Most Excellent Majesty.*

MOST GRACIOUS SOVEREIGN,—The petition of the undersigned, duly representing the Evangelical Alliance for the Dominion of Canada, humbly sheweth—

That your petitioners approach your Majesty on behalf of those ministers and members of various Protestant churches who united to form the said Alliance in October, 1888, with the intent—

1. To manifest and strengthen Christian unity.
2. To vindicate religious liberty, and
3. To promote co-operation in Christian work, without interference with the internal affairs of the different denominations.

That your petitioners and those whom they represent are, and ever have been, loyal subjects of your Majesty, who seek to perpetuate for themselves and their children, in this part of the empire, the laws and liberties secured at so great a cost by their forefathers in the British isles.

That the rights of your petitioners have recently been invaded in a manner that leaves them no redress, save in this appeal which they now bring to the foot of the Imperial Throne.

That at the same time, and by the same means, such an interference has taken place with your Majesty's royal prerogative, such unfounded reproach cast upon public acts of preceding sovereigns, and such dangerous precedents set for the future, to the mother country as well as to the colonies, as, your petitioners humbly represent, demand the vigilant attention of your Majesty's government.



That the greivance of your petitioners is as follows :—

The order of the Jesuits in Canada, while the country was a French possession, became possessed by royal grant, private donation, and purchase or exchange, of large and valuable estates. At the conquest in 1759, the order petitioned to be allowed to retain its property. The petition was reserved until the King of England's pleasure was known. The petition was never granted. In the Treaty of Cession in 1763, the King of France made no stipulation in favour of the order, which in 1761, he had banished from his European dominions. The law officers of His Majesty King George III, reported the Jesuit's title to continual possession fundamentally bad, inasmuch as the General of the order, in whom all its powers were vested, was a foreigner residing in Rome, the order itself was prohibited by the laws of England, and the estates being thus without a legal owner, fell to the Crown. By the Crown the estates were devoted "inviolably and exclusively to the education of the people." In 1773 the "Society of Jesus" was entirely suppressed and abolished everywhere by the reigning Pope. The King, however, with indulgent generosity, allowed the Jesuit Fathers, left in Canada, to reside in their former buildings and draw a maintenance from the property as long as they lived. In 1800 full and actual possession was taken by the Crown, and the estates have remained public property until now, having been transferred by the Imperial government to that of Canada, and by the Dominion to the province of Quebec, but throughout devoted to purposes of public education.

These Jesuits' estates, by an Act of the legislature of Quebec (51-52 Victoria, chapter 13) have now been taken away from the Educational Fund. The Act of His Majesty George III, is stigmatized as "spoliation." A claim for "compensation" has been made and allowed as a "moral obligation." The sum of four hundred thousand dollars of public money of your Majesty is placed at the disposal of the Pope for distribution in the province of Quebec as he may see fit. His consent was made necessary to legislation in a province of your Majesty. His Secretary of State writes : "The Pope allows the government to retain the proceeds of the sale of the Jesuits' estates as a special deposit, to be disposed of with the sanction of the Holy See." With the exception of sixty thousand dollars offered for Protestant education, the whole of the remainder of the Jesuits' estates proceeds are made part of the ordinary funds of the province, and thus the inhabitants of the province are deprived, for all time, of the benefit of a fund set apart for public instruction by an Act of Royal Bounty.

That your petitioners, under a deep sense of this greivous injustice and lasting injury, petitioned the Governor General in Council to disallow the Quebec Jesuits' Estates Act of 1888, but without avail ; his Excellency's advisers alleging that "the subject matter of the Act is a provincial concern only, having relation to a fiscal matter entirely within the control of the legislature of Quebec.

That your petitioners contend that these reasons are ill-founded and insufficient, and are now constrained to appeal to your Majesty. They plead that his Excellency should have been advised :

1. That this was a "matter of imperial concern," dealing with a grant of the Crown, to which its faith was pledged, that faith on which implicit reliance is always placed, and which is held most sacred by all British sovereigns and their advisers.

2. That the functions conceded in the said Act to the Holy See are utterly incompatible with the maintenance of your Majesty's sole and supreme authority within the British dominions, and, under the claims of super-eminent control asserted by the Pope over all nations and all rulers, cannot fail to be enlarged in future legislation in the province of Quebec, where the Roman Catholic Church is already the dominant power of the State.

3. That the Act in question, while dealing with "a fiscal matter," had much graver consequences in relation to public education, as to which a special right of appeal to his Excellency in Council is reserved in the British North America Act of 1867 (section 93, subsections 3 and 4), and therefore demanded the fullest attention of the Council after the hearing of the parties ; and—

4. That in a matter thus involving the honour of the Crown, as well as the rights of the people, the Act should be reserved for your Majesty's pleasure.



That the power of disallowance has been exercised by his Excellency in Council with regard to "fiscal matters of provincial concern" in cases of inferior importance to this.

That by the withdrawal of the large capital sum derivable from the Jesuits' estates, estimated at fully two millions of dollars, from the permanent educational fund of the province, a great wrong has been done to the whole people, French and English, Roman Catholics and Protestants alike, whose schools and colleges are suffering for want of more liberal support.

That your petitioners would entreat your Majesty's gravest attention to the danger of the precedent set by this "compensation" for estates lawfully taken in possession by the Crown over a hundred years ago; that legislation in regard to ecclesiastical endowments in Canada has already served as a warrant and a model for similar legislation in the Imperial Parliament; that claims are still asserted, as they have been without ceasing, in favour of various orders in the Church of Rome, to church and college and other properties once in their possession, but long since taken by the Crown for other uses; and that the Jesuits' Estates Act of Quebec will assuredly be urged as an argument for like "compensation" in Great Britain itself.

That in all the claims asserted to the Jesuits' estates, from the suppression of the order until now, such claims have been founded upon the doctrine of the Roman canon law, that the Holy See is heir to the property of any extinct society in the Roman Catholic Church, which doctrine is utterly at variance with the laws of Great Britain, which, from the conquest of Canada, were proclaimed as defining the liberty of the Catholic religion, and that the admission of said doctrine and the consequent recognition of the canon law as in force within your Majesty's dominions, are public acts done in your Majesty's name, which are fraught with vital and far-reaching perils to the very constitution of the empire.

That your petitioners, while dwelling in general concord and amity with our fellow-subjects of the Roman Catholic faith, are nevertheless made to feel, from time to time, that the full liberty of self-government, enjoyed in the province of Quebec, is used, under the influence of a church claiming universal control over human affairs, to the injury of the Protestant minority, but that there is the greatest danger of this, with the least hope of redress, when such a body as the Order of Jesuits is incorporated and endowed—a body whose individual members are bound by their most solemn vows to a "blind obedience" to a superior in Rome: which has been expelled from one Catholic country after another throughout all Europe: which for forty years was suppressed by the popes themselves: which has been long under the ban of the British law: which is obnoxious to many of the Roman Catholic authorities here: and the increase of whose powers is full of danger to public liberty and the stability of your Majesty's throne.

That your petitioners therefore lay the case here presented before your Majesty, not only as a matter of private or local wrong, but as one involving the honour and welfare of the empire, and humbly invoke your Majesty's interposition therein in such a manner as may vindicate the good faith and authority of the Crown and the rights of your Majesty's loyal subjects in Canada.

And your petitioners, as in duty bound, will ever pray.

W. H. HOWLAND, *President.*  
ALEX. CAMPBELL, *Secretary.*

*Lord Knutsford to Lord Stanley of Preston.*

DOWNING STREET, 8th June, 1889.

MY LORD,—I have the honour to acknowledge the receipt of your despatch, No. 110, of the 21st May, forwarding a petition to Her Majesty from the Evangelical Alliance respecting the Quebec Jesuits' Estate Act.

I request that you will inform the petitioners that I duly laid their memorial at the foot of the Throne, and that the Queen was pleased to receive it very graciously, but that I was unable to advise Her Majesty to interfere in the matter, which is one within the discretion of the government of the Dominion.

I have, &c.

KNUTSFORD.

*Lord Stanley of Preston to Lord Knutsford.*

22nd July, 1889.

Can you inform me at early date whether law officers regard Jesuits' Estates Act to be within competence of provincial legislature? If they are clearly of that opinion, might I allow the fact to be known publicly? \* \*

*Lord Knutsford to Lord Stanley of Preston.*

Referring to your telegram of 23rd July, after full consideration of memorandum of Minister of Justice, law officers of the Crown report that, in their opinion, decision arrived at by you not to interfere with operation of Act was correct course and constitutional; no objection to giving publicity to law officers' opinion.

25th July, 1889.

*Lord Knutsford to Lord Stanley of Preston.*

Referring to my telegram of the 25th July, law officers of the Crown further advised that Act clearly within power of provincial legislature, and no grounds for reference to Judicial Committee of Privy Council. Despatch follows by mail.

2nd August, 1889.

*Lord Knutsford to Lord Stanley of Preston.*

DOWNING STREET, 6th August, 1889.

You will have learned from my telegrams of the 25th July and the 2nd of August that I consulted the law officers upon this question, and I inclose for your own information and guidance copies of the reports which I have received from them.

I have, &c.,

KNUTSFORD.

*Law Officers to Colonial Office.*

ROYAL COURTS OF JUSTICE, 9th July, 1889.

MY LORD,—We were honoured with your Lordship's commands signified in Mr. Edward Wingfield's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us a memorandum by Sir John Thompson, the Minister of Justice in Canada, on the statute of Quebec (chapter 13 of 1888,) entitled: "An Act respecting the settlement of the Jesuits' Estates," and that he was to inform us that the government of the Dominion were desirous of knowing whether, in our opinion, the decision arrived at not to interfere with the operation of that provincial Act, was right and constitutional.

We have taken the matter into our consideration and, in obedience to your Lordship's commands, have the honour to report that in our opinion, the decision arrived at by the Governor General not to interfere with the operation of the provincial Act in question, was right and constitutional.

We have, etc.,

RICHARD E. WEBSTER,  
EDWARD CLARKE.

*Law Officers of the Crown to Lord Knutsford.*

ROYAL COURTS OF JUSTICE, 31st July, 1889.

MY LORD,—We were honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 29th instant, stating that the purport of our opinion, on the subject of the Act of the province of Quebec "respecting the settlement of the Jesuit's Estates," as expressed in our report of the 9th July, was communicated to the government of Canada, and that your Lordship has now been informed that that government would be glad to be favoured with our further opinion on two points, not specially brought before us in the letter from the Colonial Office of the 3rd instant.

That your Lordship accordingly desires to be informed whether, in our opinion, the legislation in question was clearly within the competence of the provincial legislature.

That your Lordship had inferred from our opinion that the action of the Governor General in not interfering with the operation of the Act was right and constitutional, that we concurred in the opinion of the Minister of Justice of the Dominion that the Act was *intra vires* of the provincial legislature, but that as the question had been directly asked, your Lordship would be obliged by our answer to it.

That Sir Robert Herbert was further to acquaint us that the "Evangelical Alliance of the Dominion of Canada" had petitioned the Queen against the Act in question, and that your Lordship had declined to tender any advice to Her Majesty in regard to that petition.

That your Lordship would be obliged by our informing you whether, in our opinion, the competence of the provincial legislature of Quebec to pass the Act was so clear that there was no ground for a reference to the Judicial Committee of the Privy Council. \* \*

That Sir Robert Herbert was to return, for our convenience, the Memorandum by Sir John Thompson previously forwarded to us, and to request that we would, at our earliest convenience, report on the two questions submitted.

In obedience to your Lordship's commands, we have the honour to report :

That we are of opinion that the Act was clearly within the powers of the provincial legislature, and that there is no ground for a reference to the Judicial Committee of the Privy Council.

We have, &c.,

RICHARD E. WEBSTER,  
EDWARD CLARKE.

*Lord Stanley of Preston to Lord Knutsford.*

CANADA, CITADEL, QUEBEC, 8th August, 1889.

MY LORD,—I have the honour to state that a short time ago, while absent from the seat of government, I received an application, forwarded through the Secretary of State at Ottawa, asking when I would receive an influential deputation, the members of which were desirous of personally presenting to me petitions for the disallowance of the Jesuit's Estates Act.

At the express wish of the minister, I received the deputation here on the 2nd instant, and I inclose for your Lordship's information a report from the Quebec *Morning Chronicle*, which gives a fairly accurate account of what took place.

I do not think it necessary for me to trouble your Lordship with any further observations upon this matter, which, although it continues to be hotly discussed in Ontario, and in a limited portion of the province of Quebec, does not seem to excite much feeling in other parts of the Dominion.



I have thought it best to await the arrival of your Lordship's despatch, referred to in a recent telegram, before allowing any public intimation of the opinion of the Imperial law officers to be made.

The Act by lapse of time passes into law to-day.

I have, &c.,

STANLEY OF PRESTON.

#### HIS EXCELLENCY'S SPEECH.

His Excellency the Governor General then replied as follows:—

"It has not been usual to receive such a deputation as this, but, in view of the importance of the subject, I am willing to create a precedent. At the same time, it is one which I do not think should be too often followed. The difficulty experienced by a person in my situation in receiving deputations is that one may lay one's self open to the charge of arguing for or against the measures in which the deputations are interested. But with the sanction of my advisers, I am disposed to let the deputation know what has been the aspect of the case, as it presented itself to me. There is no disrespect to those who have so ably stated their views, if I express neither concurrence with, nor dissent from them, lest I should drift into what might be construed as argument, however unintentionally.

"Previously to my arrival in the country, or about that date, the legislature of Quebec had passed the Act in question. The history of the Jesuits' estates is so well known that I need not refer to it in detail. Large amounts of property had lain virtually idle, because when the provincial government had endeavoured to sell, protests had been made by the claimants, and, in fact, no one would accept so doubtful a title.

"I cannot agree with the view expressed in the second paragraph of one of the petitions, that the Act in question recognizes a right on the part of the Pope to interfere in the civil affairs of Canada.

"There were two sets of claimants, at least, to the Jesuits' estates. It was necessary to arrange to whom compensation should be paid, and to ensure a division which would be accepted by all. It is true that the Pope, as an authority recognized by both sets of claimants, was to be called upon to approve or disapprove the proposed division, so far as Roman Catholic claimants were concerned, but this appears to me to relate not to the action of the legislature of the province, but to the division of the funds after they had been paid over. It is arguable that as a matter of fact there is no reference to the Pope's authority at all in the executive portion of the Act. It is undoubtedly the case that the preamble to the Act (an unusually long one, by the way) contains a recital of events which led to the introduction of the Bill, and that in the correspondence so set out, authority had been claimed on behalf of the Holy See, to which, however, the First Minister did not assent. The introduction of the name of the Pope may be unusual, and very likely unpalatable to some, as Protestants, but as it appears in the course of a recital of facts which had previously occurred (and which, of course, legislation could not obliterate or annul), and there being moreover (as I have before stated) no such reference in the body of the Act, I did not consider that Her Majesty's authority was in any degree weakened or assailed, not that I was compelled, in the exercise of my duty as Her representative, to disallow the Act on that account.

"Now with regard to the third paragraph of your petition, as to the question of policy—that is not one on which I feel at liberty to pronounce an opinion. I believe, and am confirmed in my belief by the best authorities whom I can consult, that the Act was *intra vires*. There my power of interference is limited. For the Act does not appear to do more than to seek to restore to a certain society, not in kind but in money, a portion of the property of which that society was in years gone by deprived, without compensation; and it professes to give a compensation therefor in money of the province which had become possessed of the property and was profiting by it.

"As to the recognition (spoken of in paragraph 4) of the rights of the Jesuit Society to make further demands, it seems to me that this Act leaves so called 'rights' exactly where they were.

"It is by no means uncommon for the Crown to recognize such a moral claim, and I can speak from my personal experience when Secretary of the Treasury (ten or twelve years ago), and when it constantly happened that in cases of intestacy, escheats and other forfeitures to the Crown, the moral claim of other persons was admitted, and remissions were made, not as a matter of legal right, for the right of the Crown was undisputed, but as a matter of grace. There are also many parliamentary precedents to the same effect. Such cases, it seems to me, must in each instance be decided upon their own merits.

"As to paragraphs 5 and 6, you will pardon my saying that I am not concerned either to admit or deny your statement. But as a matter of fact, I do not find any evidence that in this Dominion, and in this 19th century, the Society of Jesus have been less law-abiding or less loyal citizens than others. With regard to paragraph 6, it appears to me that the legal status of the society was settled by the Act of 1887 (to which little or no objection was taken). I cannot see anything unconstitutional in that respect, in the payment of the money in question to a society duly incorporated by law.

"The Governor General, both by the written law, and by the spirit of the constitution, is to be guided by the advice of his responsible ministers. If he disagrees with them on question of high policy, as being contrary to the interests of Her Majesty's empire, or if he believes that they do not represent the feeling of Parliament, it is constitutionally his duty to summon other advisers, if he is satisfied that those so summoned can carry on the Queen's Government and the affairs of the Dominion. As to the first, I cannot say that I disagree with the course which, under the circumstances, ministers have recommended, believing it, from the best authorities to which I have access, to be constitutional. The Parliament of the Dominion by 188 to 13 has expressed the same view. And with reference to what has been said to the effect that the vote of Parliament does not represent the opinion of the Dominion, I decline entirely to go behind recorded votes. Members of Parliament are elected, not as the delegates, but as the representatives of the people, and it is their duty to guide themselves according to that which they believe to be the best interests of the high function which they have to discharge. Again, I would ask, do the dissentients represent the majority? I find that the 188 represent 916,717 voters, whereas the 13 members represent 77,297, and moreover the body of the constitutional Opposition appears to have voted for the approval of the allowance of the Bill. I have been asked, though not by you, to disallow the Act, though otherwise advised by ministers, and though contrary to the sense of Parliament. Would it be constitutional for a moment that the Governor General should do so, if it were a question of commerce or of finance, or of reforming the constitution? It is by the constitution we have to be governed, and I cannot conceal for a moment the doubt which I feel that however careful the Governor General may be in receiving such a deputation as this, there may be some risk of his being held up as a court of appeal on questions of constitutional government, and against the parliament with which it is his duty to work in concert. Then it has been said: Why not facilitate a reference to the Privy Council. I believe that my advisers have a perfectly good answer, that having no doubt of the correctness of their view, they have good reason for not doing so. I have been asked to dissolve the House of Commons in one of the petitions to which I am replying. A dissolution of Parliament, in the first instance, except under the gravest circumstances, and perhaps with great reservation even then, should not be pronounced except upon the advice of responsible ministers. It causes the disturbance of the various businesses of the country. The expense, both to the country and to all concerned, is such that it is a remedy which should be exercised only as a last resort; and I must say, though I do so with great deference to those present, that excepting in the province of Ontario and Quebec, there does not appear to have been any general feeling in this matter, such as would warrant the Governor General to use this remedy. I recognize the influence of the two provinces, but I cannot leave the rest of the Dominion out of sight, and I may express the personal hope that this Parliament may exercise for some time to come a wise constitutional influence over the affairs of this country.



"I think my answer has been made substantially to the other petitions which have been presented to me. For the reason which I have given, I am unable to hold out to you any hope that I shall disallow the Act. You cannot suppose the course taken by my advisers and approved by me was taken without due consideration. Nothing has taken place to alter the views then entertained. Nor could the government recommend the reversal of an allowance already intimated.

"Gentlemen, I cannot conceal from you the personal regret with which I feel myself addressing a deputation and returning such an answer as it has been my duty to do to the petitions which have been presented to me; but I have endeavoured to make my statement colourless, I have endeavoured to avoid argument, and I can only hope that I have done something to dissipate alarm. I will only close by making an earnest appeal—an appeal which by anticipation has already, I am certain, found weight with you, and that is, that in this question we should, as far as possible, act up to that which we find to be for the welfare of the Dominion. During late years we have hoped that the animosities which unfortunately prevailed in former years had disappeared, and that the Dominion, as a united country, was on the path of prosperity and peace. I earnestly call upon all the best friends of the Dominion, as far as possible, while holding their own opinions, to be tolerant of those of others, and like our great neighbour, to live and let live, that we may in time to come feel that we have the one object of promoting the prosperity and welfare of the Dominion, and the maintenance of loyalty and devotion to the Sovereign."

*Petitions (3) from Electors entitled to vote for Members of the House of Commons and from certain of the Protestant Minority of the Province of Quebec.*

(1.) *To His Excellency the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, G.C.B., Governor General of Canada.*

The petition of the undersigned electors entitled to vote for members of the House of Commons, humbly sheweth:

1. That an Act was lately passed by the legislature of the province of Quebec, entitled: "An Act respecting the settlement of the Jesuits' Estates."

2. That the said Act recognizes a right on the part of the Pope to interfere in the administration of the civil affairs of Canada, which is derogatory to the supremacy of the Queen and menacing to the liberties of the people.

3. That it places \$400,000 of public funds at the disposal of the Pope for ecclesiastical and sectarian purposes, is further evidenced by the papal brief which apporitions these funds, an appropriation of public money contrary to the spirit of British and Canadian legislation, and subversive of the religious equality which ought to exist.

4. That in effect recognizes the right of the Jesuits to make further demands, by embodying in the preamble a declaration, nowhere questioned in the Act, of the treatment which the Jesuit Society expects in the future at the hands of the government of Quebec, viz.: "That the establishments of the Jesuit Fathers in this province are always allowed in accordance with their deserts, and, if they ask for it, to participate in the grants which the government of this province allows to other institutions to encourage teaching, education, industries, arts and colonization."

5. That the Jesuit Society has been expelled from nearly all Roman Catholic countries, was suppressed by Pope Clement XIV., has been since the days of Queen Elizabeth an illegal association, the establishment of which (in the opinion of the Solicitor General of England, given in 1772) "is not only incompatible with the constitution of an English province, but with every possible form of civil government."

6. That the Act endows and recognizes the legal status of this society, whose operations are confined to no single province.

7. We respectfully submit that, for the reasons herein set forth, the Act, so far from dealing with matters of provincial concern merely, is one which affects the peace and well-being of the whole Dominion.



8. The undersigned approach your Excellency by way of petition because they believe that the majority of the House of Commons in voting against the disallowance did not represent the real views and wishes of their constituents, and there is no other way in which the minds of the people can be represented to your Excellency.

9. Never to your petitioners knowledge has a case arisen in which there existed stronger reasons for invoking the power of disallowance.

Your petitioners therefore pray :

(1.) That the Act for the settlement of the Jesuits' Estates be disallowed.

(2.) Or that your Excellency do exercise your prerogative right of dissolving the House, so as to enable the constituencies to pronounce on the question at the earliest possible moment.

And your petitioners will ever pray.

*(2.) To His Excellency the Governor General in Council.*

The appeal and petition of the undersigned loyal subjects of Her Majesty, residing in the province of Quebec, made pursuant to section 93 of the British North America Act, humbly sheweth : That the appellants, your petitioners, are ratepayers and electors residing in said province, and form part of the Protestant minority of the population of said province.

That at the date of confederation there were certain estates and property of the late Order of Jesuits, which, under the provisions of the Act 19-20 Vic., cap. 54 (chapter 15 of the Consolidated Statutes of Lower Canada), formed the "Lower Canada Superior Education Investment Fund," of which fund the Protestant minority of the province were entitled to a share and portion.

That the Act of the legislature of the province of Quebec, 51-52 Vic., cap. 13, intituled : An Act respecting the settlement of the Jesuits' Estates," has abolished said "Lower Canada Superior Education Investment Fund," and provided that the said estates and property may be applied to purposes other than those to which said fund was appropriated by said Act, 19-20 Vic., cap. 54 (chapter 15 of the Consolidated Statutes of Lower Canada).

That the said Act of the legislature of the province of Quebec, 51-52 Vic., cap. 13, has thus injuriously affected the rights of the Protestant minority, by abolishing said fund.

That the Society of Jesus, or Order of Jesuits, had not, and have not, any right, title or claim whatsoever to receive from the province of Quebec the sum of four hundred thousand dollars appropriated by the said Act 51-52 Vic., cap. 13, and said Act appropriating that sum, and also the Laprairie Common, and granting \$60,000 to the Protestant Committee of the Council of Public Instruction, is prejudicial to the rights and interests of the Protestant minority of said province.

That the submission of the said alleged settlement of the Jesuits' estates to the Pope of Rome, as set forth in the preamble of said Act 51-52 Vic., cap. 13, is unconstitutional, as being contrary to the provisions of an Act passed in the first year of the reign of Queen Elizabeth, and declared by the Imperial Act, 14 George III., c. 83, to have force and effect in this province, and said unconstitutional Act is prejudicial to the interests of the Protestant minority of this province.

Wherefore, your petitioners hereby humbly appeal to your Excellency in Council against said Act of the legislature of the province of Quebec, 51-52 Vic. cap. 13, and pray that your Excellency in Council will be pleased to disallow said Act and annul and set aside the same ; and your petitioners, as in duty bound, will ever pray.

*(3.) To His Excellency the Governor General in Council.*

MAY IT PLEASE YOUR EXCELLENCY :

The undersigned residents of . . . . ., being convinced that the Jesuits' Estate Act of the provincial legislature of Quebec, assented to by the Lieu-

tenant-Governor of this province on 12th July, 1888, infringes on the rights of the minority in the province of Quebec, as guaranteed by section 93, British North America Act, and is prejudicial to the interests of the commonwealth, dangerous to the peace of the Dominion of Canada, and derogatory to the Queen, Her Crown and dignity :

Respectfully pray that your Excellency the Governor General in Council may be pleased to disallow said Act.

*Lord Stanley of Preston to Lord Knutsford.*

THE CITADEL, QUEBEC, 9th August, 1889.

My LORD,—I have the honour to transmit to your Lordship a copy of a communication from the Secretary of the Quebec Branch of the Evangelical Alliance, forwarding two petitions (5th August) addressed to Her Majesty the Queen, praying for the disallowance of the Jesuits' Estate Act of 1888.

I also inclose for your Lordship's information a copy of the letter (6th August) which I caused to be addressed to the Secretary in acknowledging the petitions.

I have, &c.

STANLEY OF PRESTON.

*Secretary Quebec Evangelical Alliance to Governor General.*

QUEBEC, 5th August, 1889.

*His Excellency the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, P.C., G.C.B., Governor General of Canada.*

MAY IT PLEASE YOUR EXCELLENCY :

I am instructed by the Quebec Branch of the Evangelical Alliance to forward you the inclosed petitions to Her Most Gracious Majesty the Queen, praying for the disallowance of the Quebec Jesuits' Estates Act of 1888.

I have, &c.,

W. BROWN,

*Secretary Evangelical Alliance.*

*Copy of Petitions to the Queen's Most Excellent Majesty.*

MOST GRACIOUS MAJESTY :—

The petition of the undersigned inhabitants of Quebec, in the province of Quebec, humbly sheweth :

That your petitioners, being loyal subjects of your Majesty, jealous of all that may infringe upon your royal rights and prerogatives, as well as determined to maintain their own liberties, as established by law, do now approach your Majesty as the highest authority in the empire, in support of the pleadings and prayer of a petition in reference to the Quebec Jesuits' Estates Act of 1888, which has been laid at the foot of the throne by the representatives of the Evangelical Alliance of the Dominion of Canada.

And your petitioners, as in duty bound, will ever pray.

*Governor General's Secretary to Secretary Quebec Branch Evangelical Alliance.*

CITADEL, QUEBEC, 6th August, 1889.

SIR,—I am directed by his Excellency the Governor General to acknowledge your letter of the 5th inst., received this morning, requesting that petitions which you inclose, praying for the disallowance of the Quebec Jesuits' Estate Act of 1888, should be forwarded to Her Majesty the Queen.

His Excellency desires me to say that while he will comply with your request, and transmit the petitions by the next mail, the only object which will be gained thereby will be that the opinions of the signatories should become known, as the Imperial government has already signified that the Act in question is a matter for the decision of the Dominion.

I have, &c.,  
 CHARLES COLVILLE,  
*Captain, Governor General's Secretary.*

*Lord Knutsford to Lord Stanley of Preston.*

DOWNING STREET, 22nd August, 1889.

MY LORD,—I have the honour to acknowledge the receipt of your despatch of the 8th instant, with its inclosure, respecting the Jesuits' Estates Act.

I am glad to conclude that the statement which your Lordship made to the deputation which you received on the 2nd instant, which statement is supported by the opinion of the law officers of the Crown, has been productive of good effect

I have, &c.,

KNUTSFORD.

*Lord Knutsford to Lord Stanley of Preston.*

DOWNING STREET, 27th August, 1889.

MY LORD,—I have received and laid before the Queen the two petitions which accompanied your despatch, No. 163, of the 9th instant, forwarded to your Lordship, for transmission, by the Quebec Branch of the Evangelical Alliance, praying for the disallowance of the Quebec Jesuits' Estates Act of 1888.

Her Majesty was pleased to receive these petitions very graciously, but I was unable to tender any advice in respect to them, as the Act has already passed into law, and the question is one within the competence of the Dominion government to decide.

I have, &c.,

KNUTSFORD.

#### MEMORANDUM ON THE STATUTE OF QUEBEC.

(Cap. 13, of 1888).

Entitled : " An Act respecting the Settlement of the Jesuits' Estates " prepared by the Minister of Justice.

The contention has been put forward that the statute above mentioned is *ultra vires* of a provincial legislature, and should have been disallowed by his Excellency the Governor General.

The year within which disallowance might have been exercised (see section 56 and 90 of the British North America Act) would not have expired until the 8th of August, 1889 ; but on the 19th of January, 1889, the Lieutenant-Governor of Quebec was notified that this, and a large number of other Acts, of Quebec, of the same session, would be left to their operation.



The contention referred to was before the House of Commons of Canada in the session of 1889, in a resolution expressing the opinion that the Act should be disallowed. The resolution was negatived by a vote of 188 to 13.

The government has also been asked to take steps whereby the question, as to the validity of the Act, may be raised before the Judicial Committee of the Privy Council.

His Excellency has not been advised to adopt such a course, because his government regard the Act as clearly within the powers of the legislature which passed it.

These powers are defined by the 92nd section of the British North America Act (1867), in which the following subjects are enumerated, among others, as being within the legislative competence of each of the provinces :—

“ 1. The amendment from time to time, notwithstanding anything in this Act, of the constitution of the province, except as regards the office of Lieutenant-Governor.

“ 2. Direct taxation within the province, in order to the raising of a revenue for provincial purposes.

“ 3. The borrowing of money on the sole credit of the province.

“ 5. The management and sale of public lands belonging to the province, and of the timber and wood thereon.

“ 11. The incorporation of companies with provincial objects.

“ 13. Property and civil rights in the province.

“ 16. Generally all matters of a merely local or private nature in the province.”

The 93rd section of the British North America Act also gives exclusive powers to the legislatures of the provinces to make laws in relation to education.

The grounds on which the statute in question is claimed, by persons who have asked for its disallowance, or who have urged that its validity should be passed on by the Judicial Committee of the Privy Council, to be *ultra vires* of the Quebec legislature, are the following :—

1st. Because it endows from the public funds of the province a religious organization. This is said to be inconsistent with the separation of Church and State, and to result in inequality as between religious denominations.

2nd. Because it is said to recognize a right in the Pope to claim that his consent was necessary to empower the provincial legislature to dispose of a part of the public domain. This is said to be even subversive of Her Majesty's supremacy.

3rd. The Act diverts, it is said, the “estates” to which it refers from the educational purposes, to which by law they had been devoted.

4th. The assent of Ontario is said to have been necessary to the disposition made by the statute of the “estate” in question.

A brief narrative of the facts relating to the Jesuits' estates in Quebec may serve to elucidate the subject.

While the country was under the dominion of France the members of the Society of Jesus were the most active missionaries among the savages, and were the principal teachers and ministers of religion, both among the settlers and aborigines.

The sacrifices which they underwent, in every part of the country, in their contact with the Indians, involving not only extreme privations and great hardships, but in many cases mutilation and loss of life, excited the devotion and ardour of many persons of their faith in France. As a result of this the society in Canada was endowed with donations of property, goods and money from persons in France, from property holders in New France, and from the King of France. The purchases by the Jesuits themselves formed the only other class of titles to these estates. In some cases the properties were expressly charged with trusts in favour of religion and education, and in other cases no trusts were expressed.

The Jesuit community in Canada had been erected into a corporation by the King of France, and the Jesuits were in full enjoyment of their estates at the time of the conquest of Canada in 1759.

In reference to the value of these estates, Father Turgeon, S.J., in a letter to the Premier of Quebec, dated 20th May, 1888, contained in the preamble to the statute under review, says : “ According to the official report which you were kind enough to com-

municate to me, I find that the Jesuits' estates are valued at the sum of \$1,200,000. This is only approximate, and I think it is greatly less than the real value. Competent men whom I have consulted at Quebec, Montreal and Three Rivers, do not hesitate to say that the Jesuits' estates are worth at least \$2,000,000."

The following articles from the capitulations may be supposed to have some bearing on the matter :—

#### CAPITULATION OF QUEBEC, 18TH SEPTEMBER, 1759.

"ART. II. That the inhabitants shall be preserved in the possession of their houses, goods, effects and privileges." *Answer*—"Granted, upon their laying down their arms."

"ART. VI. That the exercise of the Catholic Apostolic and Roman religion shall be maintained ; and that safeguards shall be granted to the houses of the clergy, and to the monasteries, particularly to His Lordship the Bishop of Quebec, who, animated with zeal for religion and charity for the people of his diocese, desires to reside in it constantly, to exercise freely and with that decency which his character and the sacred offices of the Roman religion require, his episcopal authority in the town of Quebec, whenever he shall think proper, until the possession of Canada shall be decided by a treaty between their Most Christian and Britannic Majesties." *Answer*—"The free exercise of the Roman religion is granted, likewise safeguards to all religious persons, as well as to the Bishop, who shall be at liberty to come and exercise, freely and with decency, the functions of his office, whenever he shall think proper, until the possession of Canada shall have been decided between their Britannic and Most Christian Majesties."

#### CAPITULATION OF MONTREAL AND OF THE WHOLE PROVINCE, 8TH SEPTEMBER, 1766.

"ART. XXVII. The free exercise of the Catholic Apostolic and Roman religion shall subsist entire, &c., &c." *Answer*—"Granted as to the free exercise of their religion. The obligation of paying tithes to the priest will depend on the King's pleasure."

"ART. XXXII. The communities of nuns shall be preserved in their constitution and privileges. They shall be exempt from lodging any military, and it shall be forbid to trouble them in their religious exercises, or to enter their monasteries ; safeguards shall even be given them if they desire them." *Answer*—"Granted."

"ART. XXXIII. The preceding article shall likewise be executed with regard to the communities of Jesuits and Recollets, and to the house of the priests of St. Sulpice at Montreal. This last, and the Jesuits, shall preserve their right to nominate to certain curacies and missions, as heretofore." *Answer*—"Refused till the King's pleasure be known."

"ART. XXXIV. All the communities and all the priests shall preserve their movables, the property and revenues of the seignories and other estates which they possess in the colony, of what nature soever they be, and the same estates shall be preserved in their privileges, rights, honours and exemptions."—*Answer*—"Granted."

"ART. XXXV. If the canons, priests, missionaries, the priests of the Seminary of the Foreign Missions, and of St. Sulpice, as well as the Jesuits and Recollets, choose to go to France passage shall be granted them in His Britannic Majesty's ships, and they shall have leave to sell, in whole or in part, the estates and movables which they possess in the colonies, either to the French or to the English, without the least hindrance or obstacle from the British government. They may take with them, or send to France, the produce of what nature soever it be, of the said goods, sold, paying the freight as mentioned in the XXVIth Article ; and such of the said priests who choose to go this year shall be virtualled during the passage at the expense of His Britannic Majesty ; and they shall take with them their baggage." *Answer*—"They shall be masters to dispose of their estates, and to send the produce thereof, as well as their persons, and all that belongs to them to France."



It is contended that Article XXXIV, of the Capitulation of Montreal; applied to Jesuits (who were then a community, see Article XXXIII), and that the refusal given to Article XXXIII is therefore to be considered as confined in effect to the latter part of the request, which asks rights of nomination to curacies and missions and, perhaps, to those parts of the article which asked for exemption and other privileges.

Significance has been attached to the fact that Article XXXIV, and not Article XXXIII, deals with the *property* of the communities and priests.

In 1763 the Treaty of Paris ceded Canada to Great Britain, and His Britannic Majesty made the following stipulation as to the exercises of religion :—

“His Britannic Majesty on his part agrees to grant the liberty of the Catholic religion to the inhabitants of Canada. He will, consequently, give the most precise and most effectual orders that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish church, as far as the laws of Great Britain permit. His Britannic Majesty further agrees that the French inhabitants and others who have been subjects to the Most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to the subjects of His Britannic Majesty.”

The restriction, “so far as the laws of Great Britain permit,” has been universally conceded to mean as far as such laws would permit in the colonies.

In 1773, the suppression of the Order of the Society of Jesus, by Pope Clement XIV. occurred. It has been claimed by some authorities in the province of Quebec, that if the brief of suppression was published in Canada (which it required to be in order to give it any effect there in ecclesiastical law), and of this publication there is no doubt, its effect, if any, would be to vest the property of the Jesuits in the Ordinary of each of the Dioceses in which it was situated. Probably, however, the brief had no effect, in law, in Canada.

In 1774 the Imperial Statute, 14 George III., chap. 83, known as the “Quebec Act,” was passed. It gave security, on certain conditions, to the liberty of religion in the colony. Subsequently, by royal instructions, the Society of Jesus was declared to be suppressed and dissolved, and its property was declared to be vested in the Crown, for such purposes as might hereafter be appointed. The then members of the society were allowed to continue in the enjoyment of these estates until the decease of the last survivor, which occurred in 1800. Soon after that the properties were taken possession of under a brief which declared that, by right of conquest, they had become vested in the Crown. Subsequently they were transferred by the Crown to the province for educational purposes, and statutes were passed declaring that the proceeds should be applied to such purposes exclusively. The provincial government had ample power to make sale of these estates, as of all other public lands, and the revenue derivable from the estates, and the proceeds of such sales of them as have been made from time to time, have been applied to education and to various other purposes than those of education; but it may be stated generally that the legislature has, every year, appropriated for education a far larger sum than the annual proceeds of the estates.

There has existed in the minds of a large portion of the Roman Catholic people of the province of Quebec for many years past the belief that the application of properties, which had been given for purposes of religion and of religious education to purposes of the State, was a matter which called for some redress and compensation.

The Society of Jesus was re-established in the province many years ago. It received its incorporation in the city of Quebec in 1871, and in the whole province in 1887, by chapter 28 of the statutes of that year. Besides, in 1852, by chapter 57, its college in Montreal had been incorporated, and in 1868, its educational establishment at Sault au Recollet had been incorporated by chapter 68 of that year.

When the question of compensation came to be agitated in the province, the Jesuits claimed that any compensation which should be given, or any allowance which might be made, should be given to them, while the Roman Catholic Bishops of the province maintained that any such compensation or allowance should be made to



the colleges and other educational establishments which they and their flocks had established, because, on the dissolution of the Society of Jesus by Pope Clement XIV., the properties of the Jesuits were directed to be administered by them for the purpose of carrying on the work in which the Jesuits had been engaged, and because they had, as a matter of fact, taken up and carried on the work of religion and education which the Jesuits were no longer able to continue. At various times when the provincial government endeavoured to make sale of portions of these estates this claim was put forward, in the shape of protests and remonstrances against the property being disposed of, and the provincial government was, in some instances, thereby deterred from the projected sale. Under these circumstances, the Act of 1888, which is now being objected to, was passed, as the result of negotiations which the first minister of the province had entered into and concluded with the authorities of the Roman Catholic Church, and with the representative of the Jesuits, and for the purpose of giving effect to the agreement which these negotiations had reached.

*First.*—As to the first objection—that the Quebec statute under review endows from the public funds of the province a religious organization, and creates inequality between religious denominations, the opposite contention is that the Act is not *ultra vires* even if that were a correct statement of its effect. There is no provision in the British North America Act compelling the separation of Church and State, and it hardly seems open to doubt that under more than one of the enumerated powers of a provincial legislature, it would be within the competence of such a legislature to make enactments inconsistent with the separation of Church and State. A glance at the enumeration will probably be sufficient to make that view clear. There is no restriction against the endowment of religion, or, against the unequal endowment of religious bodies, in the constitution of any of the provinces, and, if there were, it must be observed that each province has power to amend its constitution within the limits of the British North America Act, which has no such restriction. Again, it is evident that the endowment of a religious denomination does not necessarily establish inequality between religious denominations. The endowment may be necessary to redress an existing inequality, or, if it causes inequality, that inequality may be redressed; it is subject to review from time to time and, even though it might be said to be impolitic and unjust to other denominations than that endowed, and even though the endowment for the time being might be said to result in an inequality, it would be impossible to test the validity of the Act by ascertaining whether it has caused an equal, or unequal, distribution of the public funds to be made as between religious bodies. This would be to a large extent a matter of opinion. It would depend partly on population, partly on extent of other endowments, partly on the question of necessity, partly on the expenditure which the denomination endowed might be called on to make in carrying on its work, partly on the extent of territory covered by the operations of the endowed denomination, and on various other conditions which it would be impossible to measure in considering the validity of the Act. It seems obvious that this would be no standard of validity and that the discretion and sense of justice of the legislature, elected by the people of the province, must be trusted to guard against an unfair use of the legislative powers in this regard.

The power to change the constitution of the province, the power to raise a revenue and to borrow (implying, as it necessarily does, the power to expend the money so raised), the power to deal with civil rights, and to control all matters of a merely local nature within the province, seem to include the power to endow a church or religious body, leaving out of consideration the propriety of such a measure, with which the present memorandum does not profess to deal;—and with regard to this particular measure, the power to dispose of the public lands (of which the Jesuits' Estates were a part), seems necessarily to include the power to appropriate the proceeds as the legislature might see fit.

But it seems impossible to regard this Act as affecting, in the slightest degree, the separation of Church and State, or as the endowment of a religious denomination. It professes to restore to a certain society a portion of the property, not in kind, but

in money, of which that society was, in years gone by, deprived, without compensation, and it professes to give a compensation therefor in the money of that province which had become possessed of the forfeited property, and was profiting by it. It seems not to enter into a consideration of the validity of the Act, that that society was formed of persons of the same religious belief, or that the object of the society was to spread the tenets of its members. To admit such a proposition would be to establish the very principle which those who raise this objection contend against, because it would affirm the idea that one religious belief—the belief of the members of the society in question—is under the ban of the law, and that it could not, on account of that belief, receive compensation for a claim which the legislature of a province, by a unanimous vote, declared to be worthy of compensation. This would certainly result in inequality as between religious denominations, unless the principle were adopted that no society could be paid public money if its members possessed any definite belief on religious subjects. That principle would perhaps establish equality as between religious denominations, by declaring that none of them could recover for any claim, but it would do far worse. It would establish inequality as between societies whose members professed religious belief, and those whose members had no religion—to the great advantage of the latter. Even if the grant of money—really made as the discharge of an obligation—had been made for the purposes of endowment, it would have had no relation to the question of Church and State. It might have been as well urged that the endowment of Maynooth College was the endowment of the Roman Catholic Church in Ireland.

*Second.*—It has been objected that the Act recognizes a right in the Pope to claim that his consent was necessary to empower the provincial legislature to dispose of part of the public domain. This has been said to be derogatory to Her Majesty's supremacy.

This objection involves a mis-statement of what has taken place and as to the effect of the references in the preamble to the authorities at Rome. As has been stated in the narrative of facts which the present review contains, there were two sets of claimants to the Jesuits' estates, or rather, two sets of claimants for what the legislature was pleased to recognize as a moral right to compensation in regard to those estates: the Jesuits on the one hand, and the Hierarchy of the Roman Catholic Church in the province of Quebec on the other. While the legal title to the property, without any doubt or question, was vested in the province, and while the provincial government had a clear and undoubted right to make sale of the estates, this claim for compensation had been put forward from time to time in the shape of protest, remonstrance and petition by both the claimants. When the legislature of the province arrived at the conclusion that compensation should be paid, in settlement or extinguishment of that claim, it was an ordinary business precaution that all the persons who participated on the claim, or who had set it up, should withdraw their claim and accept the settlement, before the compensation should be paid over, or when it should be paid over, and it was plainly necessary, even before negotiations for such a settlement could be carried on, that some one with authority, competent to represent both sets of claimants, should be treated with; otherwise two sets of negotiations would be necessary and a conclusion would be almost impossible.

The authority who, naturally by his position, and by the choice and consent of the two sets of claimants, could negotiate for them, and mediate between them, was the Pope, as being the Head of the Church to which both sets of claimants belonged. He had authority, by consent of both, to conduct the negotiations for both, and to cause both to be satisfied with any settlement which might be arrived at.

In 1884, in pursuance of this theory, the Archbishop of Quebec obtained permission to represent the Holy See in treating with the government of the province on this subject.

On the 2nd January, 1885, as appears by one of the preambles of the Act, the Archbishop wrote a letter to the Premier of the province, informing him of his authority, and on the 25th April of the same year the Premier informed his Grace that, if



the provincial government consented to reopen and reconsider this question he would consult His Grace and the Jesuit Fathers, so that he might, if expedient, "be able to submit to the legislature a measure which" would "settle this question in a definite and satisfactory manner." The government of Quebec did not seem satisfied that the authority which the Archbishop possessed included the authority to conduct the claims set up by the Jesuits themselves, because the reply of the Premier intimated that it would be necessary to consult and treat with the Jesuits as well as with His Grace.

On the 7th May, 1887, Cardinal Simeoni, Prefect of the Sacred College of the Propaganda, informed the Archbishop of Quebec (then Cardinal Taschereau), that the authority conferred on him had been withdrawn. This was done by intimating to the latter that the "Holy Father reserved to himself the right of settling the question of the Jesuits' Estates in Canada." The most critical view which can be taken of the language quoted can hardly construe it as evidence of an intention, on the part of the authorities at Rome, to interfere with the rights or property of the province. The rights of the province in these lands, as before stated, were so plainly established by statutes of the province, as well as by the concessions of the Imperial government, that the legal title was not in question, and could not be.

"The right" which Cardinal Simeoni declared that the Holy Father "reserved to himself" was not the right to control, in any way whatever, the property, but to conduct and conclude the demands of the claimants who had put forward requests for compensation from the province, and the right to decide, even as against them, that their objections to the sale of the property by the province ought to be withdrawn, for compensation or without compensation, and at whatever rate of compensation he should decide on.

It was only in respect to those points that the Holy See had conferred authority on the Archbishop of Quebec, in 1884, and it could only be that authority which was withdrawn and reserved, by the despatch in which the Pope reserved to himself the right to settle this question.

The letter of the First Minister of Quebec, dated the 17th February, 1888, to Cardinal Simeoni, set forth in the preamble of the Act, recites this despatch of the 7th May, 1887, withdrawing the authority of the Archbishop of Quebec. It states that, in 1876, a part of the estates in the city of Quebec had been divided into building lots with a view to their sale, but that the sale had not taken place, "owing to certain representations from exalted personages at the time." It states, also, that the matter had been allowed to lie, and that the property had become so neglected as to be "a grazing ground and a receptacle for filth," so much so, that the matter had "become a public scandal."

The first minister proceeded then to ask Cardinal Simeoni if he saw "any objection to the government's selling the property, pending a final settlement of the question of the Jesuits Estates." This part of his letter has excited much criticism, as inviting the interference of a foreign power. There can be no doubt that the first minister had in view the petitions, protest and remonstrances which had been put forward against the sale of the property, and was soliciting Cardinal Simeoni to interfere to prevent the obstructions which had frustrated the sale, and was asking him to agree, on the behalf of the Pope, that these objections might not be repeated, but that a sale might be made, whatever the final result might be of the claims which had been put forward, for compensation. In the next paragraph of his letter, the first minister states that the government was willing to "look on the proceeds of the sale as a special deposit to be disposed of" thereafter "in accordance with the agreements to be entered into between the parties interested, with the sanction of the Holy See."

If we are to read this proposal in the light of the history of these estates, and of the claims made upon the Quebec government in regard to them, it would seem that this passage admits of no other construction, than that it was a proposal on the part of the first minister that all the protests against the sale should be withdrawn and that, in order to assure the protesting parties that the province would not, in



making a sale, extinguish their claims, whatever they were, he was willing that the proceeds should be set aside to await a final settlement of the matter. In the concluding portion of the letter, the first minister intimates that "it will perhaps be necessary to consult the legislature of the province." This expression can only have reference to the possible settlement of the claims. It would have been quite unnecessary to consult the legislature as to the sale of the property, because the government already possessed ample authority for that purpose.

The reply of Cardinal Simeoni, dated 1st March, 1888, was that the Pope had so far acceded to the proposals made as to consent to the sale, on condition that the proceeds should be deposited at his disposal. The language used clearly means nothing more than a consent to the withdrawal of the objections to the sale of the land which was the subject of the negotiations, although it uses the words: "to grant permission to sell the property." The Quebec government declined to deposit the proceeds for the disposal of His Holiness, and, on the 24th March, 1888, Cardinal Simeoni announced the final answer of the Pope, which was that the government should "retain the proceeds of the sale as a special deposit" which had been Mr. Mercier's original proposition.

Immediately afterwards the Rev. A. B. Turgeon, S. J., received authority from the Sacred College at Rome to treat with the government in this matter. This authority seems to have superseded that which had been previously conferred upon the Archbishop of Quebec. The authority was conveyed by Cardinal Simeoni to Father Turgeon in a letter dated 27th March, 1888, in which the Cardinal intimated that the authority to treat with the provincial government would be given to the Jesuit Fathers, but they were to treat in such a manner "as to leave full liberty to the Holy See to dispose of the property as it" should deem advisable, and they were directed that "the official deed of the concession of such property" should contain "no clause or condition which could in any manner affect the liberty of the Holy See." These provisions, as to the disposal of the property finally by the Holy See were doubtless in view of the contingency, then deemed possible, that the estates themselves, or a portion of them, would be restored to the Jesuits. The Cardinal made the further stipulation that if a sum of money should be paid by the government, the Jesuit Fathers should deposit it in a place to be determined by the Sacred College.

In a letter dated 1st of May, 1888, the First Minister of Quebec put forward the bases on which he proposed that a settlement of the claims should be made. He required that the documents, conferring authority on the Jesuit Fathers to negotiate, should be duly authenticated and deposited, that it should be understood that the government did not recognize "any civil obligation, but merely a moral obligation," and that there could be no restitution of the property itself, but only compensation in money. He stipulated further, that "the amount fixed as compensation" should "be expended exclusively in the province," and, in order, evidently, to preclude all claims which could possibly be set up, either by the two sets of claimants who had previously been agitating the matter, or by any other authority, he stipulated that the province should receive "a full, complete and perpetual concession of all the property which may have belonged, in Canada, under whatever title, to the Fathers of the old Society," and there should be a renunciation as "to all rights whatsoever upon such property, and the revenues therefrom, in favour of the province" in the "name of the old order of Jesuits, as well as of the present corporation," and "in the name of the Pope, and of the Sacred College of the Propaganda, and of the Roman Catholic Church in general." It was necessary that any agreement made should receive the ratification of the legislature of the province and, as he was asking the priest with whom he was negotiating to go much beyond the express letter of his authority, in binding the Pope, the Sacred College and "the Roman Catholic Church in general," as to all of whom Father Turgeon's authority was silent, he stipulated, in language which has been misunderstood, and has, therefore, excited much unfavourable comment, that any agreement made should "be binding only in so far as it" should be ratified by the Pope and the legislature of the province." The Quebec government had arrived at the conclusion that, in order to settle all possible claims, as they were dealing with an agent

whose authority was limited, they should have the ratification of the principal, and it would seem that this precaution, which appears neither unreasonable nor unnecessary, was taken, not in *favour* of a foreign potentate, as some have supposed, and not in recognition of any civil rights in the Pope as to the property, but to guard against any possible renewal of the claims, under any other form, or under any names different from those under which they had been previously advanced. It was, for the same reason, proposed that the amount of compensation should remain in the hands of the provincial government as a special deposit, until the ratification of Father Turgeon's principal, the Pope, had been obtained, and until the Pope had made known his decision regarding the distribution, between the claimants, of the compensation money which might be agreed on. Mr. Mercier agreed that the Jesuit corporation should receive interest at four per cent from the date of the signification to the provincial secretary of the confirmation of the arrangement by the Pope, down to the time of paying the capital. He stipulated further that the statute ratifying such agreement should contain a clause enacting that when such settlement should be arrived at, the Protestant minority in the province should "receive a grant in proportion to its population in favour of its educational work."

On the 8th May, 1888, Father Turgeon replied to the first minister's letter accepting the bases of settlement.

Some further correspondence ensued, in which Father Turgeon suggested the amount of compensation which the provincial government should allow, and, on the 4th June, 1888, the first minister, replying to this, declared that he could not exceed \$400,000, and a grant of the Common of Laprairie, which was a part of the estates in question.

On the 8th the same month Father Turgeon accepted these offers.

The First Minister of Quebec, in defending the bill in the legislature, made the following explanation of the recognition of the Pope, which the correspondence seemed to contain:—

"Any serious objection to it, however slight, may disappear, for it is we, the ministers who insisted on it, in order not to give effect to the transaction unless it was sanctioned by the religious authority in the person of the Pope. And it is easy to understand why. In all important treaties made by mandatories, ratification must be made by the mandator. Thus, for example, take what concerns me personally, what concerns ministers, what is it usual to state in resolutions, in letters? That the transaction shall not avail unless sanctioned by the legislature. Well, the Rev. Father Turgeon, who was charged by the Holy See to settle this question with us, is only an agent, a mandatory, an attorney. And so that there may be no misunderstanding, so that the transaction may be final, so that the settlement may no longer be open to discussion by the religious authorities, we insist that the Pope shall ratify the arrangement. There is no question of having the law sanctioned by the Pope. Let us not play upon words. The law will be sanctioned by the Lieutenant-Governor, and it will take effect in the terms of the agreement. That is to say, sir, that if the Pope does not ratify the arrangement there will be neither interest nor principal paid, but we shall then say to the religious authorities: 'You appointed an agent to settle this question, we came to an understanding, and if you do not ratify the act of your mandatory, it is your own fault, for we, the inhabitants of the province of Quebec, through the constituted authorities, have done our part—have kept our promise—I am pleased to believe that the importance of the precaution taken by us will be understood. But once more, if there is any serious objection to that part it is very easy to come to an understanding. But in that case we must substitute something equivalent. What shall we put? We must, after all, put something to express that the transaction shall not avail till the Pope ratifies it. Well, sir, we said 'the Pope' intentionally. We did not say the congregation of the Propaganda. We did not say the Secretary of State. We said the Pope. We desired the ratification to be given by the head of the church in order that all those interested may be bound.'"

The correspondence and negotiations above commented on are the cause of the objection; that the statute recognizes "a right in the Pope to claim that his consent



was necessary to enable the legislature to dispose of a part of the public domain." Having stated what is believed to be the true interpretation of the correspondence, and its phrases, in view of the surrounding circumstances, and having stated what is believed to be their legal and actual effect and meaning, the question remains to be considered how this correspondence, and its phrases and expressions, which have excited hostile criticism outside the province of Quebec, can be considered as affecting the validity of the statute under review. It may be properly said that the expressions which are said to recognize a right in the Pope in regard to the public domain do not form any necessary part of the statute and do not in any way affect its validity or justify its disallowance. Turning to the enacting parts of the statute we find that this preliminary correspondence is only referred to in the first section, which reads thus:—

"1. The aforesaid arrangements entered into between the premier and the Very Rev. Father Turgeon are hereby ratified, and the Lieutenant-Governor in Council is authorized to carry them out according to their form and tenor."

It will be seen, therefore that the only portions of the many matters which are set out in the preamble to this statute, which are ratified, and which, therefore, form any material part of the statute, are the arrangements entered into between the Premier and the Very Rev. Father Turgeon. These arrangements are contained in the letter of the First Minister of Quebec, dated 1st May, 1888, the letter of Father Turgeon dated the 8th of the same month, the letter of the first minister dated 4th June, 1888, the letter of Father Turgeon dated 8th of the same month, and the letter of the first minister dated the same day, and the legal documents which followed in order to give effect to the settlement. All other matters which are referred to in the preamble to this statute are extraneous and irrelevant.

They are in no way confirmed by the Act in question, and all that can be said of the Act in relation to them is that it recites that such correspondence took place. Among the documents which may be enumerated, as containing nothing affecting the validity of, or affected by the Act, are the documents which contain the expressions which have excited the greatest criticism and opposition—as, for instance, the letter of the first minister to Cardinal Simeoni, dated 17th February, 1888, in which the minister mentioned that Cardinal Simeoni in a despatch to Cardinal Taschereau had informed the latter "that the Holy Father reserved to himself the right of settling the question of the Jesuits' Estates." The same document is that in which the first minister asked Cardinal Simeoni whether he saw "any serious objection to the government selling the property pending a final settlement of the question of the Jesuits' Estates." It was in that document that the first minister intimated that "the government would look on the proceeds of the sale as a special deposit, to be disposed of in accordance with the agreements to be entered into between the parties interested, with the sanction of the Holy See." Another such instance is, likewise, Cardinal Simeoni's despatch to the First Minister of Quebec, stating that the Holy Father "was pleased to grant permission to sell the property which belonged to the Jesuit Fathers before they were suppressed," provided "that the sum to be received should be deposited and left at the free disposal of the Holy See." Another such instance is the message of Cardinal Simeoni, dated 24th March, 1888, in which the Cardinal used the expression, "the Pope allows the government to retain the proceeds of the sale of the Jesuits' Estates as a special deposit," &c.

It may, therefore, with propriety, be stated that even if these expressions, to which grave exception has been taken, bear the meaning which is attributed to them, as being a recognition by Mr. Mercier of the right of the Pope to claim that the consent of his Holiness was necessary "to empower the provincial legislature to dispose of a part of the public domain," it would have been impossible to have disallowed the statute on the ground that such correspondence had taken place, and that such expressions had been used, when the Act merely recited the facts which had occurred, and contained no express ratification of what is so objected to.



To have disallowed it on any such ground would have been to have disallowed a statute, within the powers of a province, on the ground that the Act was *ultra vires* by reason of its having merely recited the existence of certain facts which did undoubtedly occur.

In amplification of the objection which is here being answered, it is stated that the recognition of a right in the Pope to claim that his consent was necessary involved a recognition of the Pope's supremacy, and involved a denial of the supremacy of Her Majesty, and also involved an admission that the legislature of one of Her Majesty's provinces could only proceed by having its legislation sanctioned by the Pope; but, at the risk of repeating the argument which has already been advanced, as to the fair construction of the correspondence set out in the preamble, it may be replied that no such consequences are involved.

The First Minister of Quebec was dealing with objections and protestations which had hindered the sale of portions of the public domain. He was negotiating for the consent and approval of one who, by the choice of all the rival claimants, had power to arbitrate and decide between them, and to induce them to withdraw their claims or to moderate them; the minister was negotiating with a view to the extinguishment, not of rights, but of claims, for restoration or compensation, and this extinguishment his government and legislature thought it desirable should be made, in order that an advantageous sale of these estates might take place. There is certainly no subversion of Her Majesty's supremacy, as head of her church. There is, surely, no subversion whatever of Her Majesty's rights and supremacy as sovereign over the province. It is not a contravention of that supremacy, that compensation should be given to extinguish, what the legislature regarded as a moral claim, in relation to estates which had become forfeited to Her Majesty's predecessors, and with which Her Majesty's predecessors had endowed the province.

The assertion might as well be made that it is a disloyal proceeding, and one subversive of the sovereign's supremacy, to entertain a doubt as to the validity of the title of a part of the public domain which a colony acquires from the Imperial government. The Quebec negotiations, however, do not go so far as that. They distinctly state that the *title* is not in question, and that none but moral obligations were being considered.

It seems needless to say that governments of British countries, and indeed Her Majesty's government, do not treat moral obligations, in relation to the public domain, or in relation to escheated property, as in any way conflicting with Her Majesty's sovereign rights and supremacy. In so far as it is supposed to be objectionable that the Pope should have been considered entitled to make any distribution of the compensation awarded, it would seem to be impossible to regard that feature as in any way derogatory to Her Majesty's authority, dignity or supremacy. It was a matter of absolute indifference to the government and legislature of the province, and surely entirely irrelevant to any consideration of Her Majesty's rights and supremacy what should be done with the amount of compensation to be paid over. The one thing which it was necessary for the government, in the interest of the province, to guard, was, that when it should be paid over the claims which it was intended to extinguish should exist no longer, and those who were acting in the interest of the province doubtless thought that this could be best accomplished by dealing with one who, by the consent of the parties interested, had their authority for the extinguishment of the claims and for settling any question as to the division of the compensation.

It will be observed that the objection being here discussed applies rather to the policy of the statute than to its validity. Indeed it is difficult to understand the objection now under consideration as being an objection in any way affecting the validity of the Act.

When the very extensive powers which the British North America Act confers (some of which have already been enumerated) are considered, it will be seen that whatever objections some may have to the Act, even on the second ground on which its invalidity is claimed, that ground would hardly be available for an attack on the Act as being *ultra vires*.

It may not be unimportant, in considering how extensive the rights and powers of provincial legislatures are, to refer to some of the authorities which have pronounced on the powers conferred on the colonies by the British North America Act and other similar enactments. For example, in the case of *Harris vs. Davies* (10 App. Cases 279) it was held by the Judicial Committee of the Privy Council, under a statute not very dissimilar from the British North America Act that:

"The legislature of New South Wales has power to repeal the statute of James I., and had impliedly done so by 11 Vic., No. 13, which, according to its true construction, placed an action for slander for words spoken upon the same footing, as regards costs and other matters, as an action for written slander." The statute of James I. had made provision as to the amount of costs which the litigant could recover when he only obtained a verdict for a certain amount for slander; the Act applied to the colony; the legislature passed an Act changing that provision. The judgment of their Lordships was delivered by Sir Barnes Peacock, who said: "Their Lordships are of opinion that there are no sufficient grounds for reversing the judgment of the court below. Their Lordships are of opinion that the colonial legislature had the power to repeal the statute of James I. if they saw fit, and they are also of opinion that, looking at the first section of 11 Vic., No. 13, it was the intention of the legislature to place an action for words spoken upon the same footing, as regards costs and other matters, as an action for written slander.

Another important decision was *Hodges vs. the Queen* (9 App. Cases 117) which is thus referred to in the case of *Powell vs. Apollo Candle Company, Limited* (10 App. Cases 282), also an important decision as to the powers of a colonial legislature.

"Two cases have come before this board in which the powers of colonial legislatures have been a good deal considered, but these two cases are of too late a date to have been known to the Supreme Court when their judgment was delivered. The first was the case of *Regina vs. Burah* (3 App. Cas., 889) in which the question was whether a section of an Indian Act, conferring upon the Lieutenant-Governor of Bengal the power to determine whether the Act, or any part of it, should be applied to a certain district, was or was not *ultra vires*. In the judgment of this board, given by the Lord Chancellor, the legislation is declared to be *intra vires*, and the Lord Chancellor lays down the general law in these terms: 'The Indian legislature has power expressly limited by the Act of the Imperial Parliament which created it, and it can of course do nothing beyond the limits which circumscribe these powers. But when acting within those limits it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation as large, and of the same nature, as those of Parliament itself.' The same doctrine has been laid down in a later case of *Hodge vs. The Queen* (9 App. Cases, 117), where the question arose whether the legislature of Ontario had or had not the power of entrusting to a local authority—a board of commissioners—the power of enacting regulations with respect to their Liquor License Act of 1877, the power of creating offences for the breach of those regulations, and annexing penalties thereto. Their Lordships held that they had that power. It was argued then, as it has been argued to-day, that the local legislature is in the nature of an agent or delegate, and, on the principle *delegatus non potest delegare*, the local legislature must exercise all its functions itself, and can delegate or entrust none of them to other persons or parties. But the judgment, after reciting that such had been the contention, goes on to say: 'It appears to their Lordships, however, that the objection thus raised by the appellants is founded on an entire misconception of the true character and position of the provincial legislatures. They are in no sense delegates of, or acting under any mandate from, the Imperial Parliament. When the British North America Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers, not in any sense to be exercised by delegation from, or as agents of, the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament, in the plenitude of its powers, possessed or could bestow.



Within these limits of subjects and areas the local legislature is supreme and has the same authority as the Imperial Parliament."

Reference may also be made to the case of *Riel vs. the Queen* (10 App. Cases, 675), in which the power of the Dominion Parliament to alter the provisions of Imperial statutes regarding trials for offences in the North-west Territories was established.

*Third.* It has been contended that the statute diverts the estates to which it refers from the educational purposes to which by law they had been devoted.

In the first place it is to be remembered that the Act does not, in express terms, or by necessary implication, make such a diversion.

It ratifies an agreement for the payment of \$400,000 and for the transfer of La-prairie Common. It provides for the payment of \$60,000 to the educational authority representing the Protestant minority in the province—and this latter sum was declared by the First Minister of Quebec, during the negotiations, to be the proportion to which the minority was entitled out of these estates—and it provides that the remainder of the proceeds of the estates are to be applied for any purposes which may be approved by the legislature. The payment of \$400,000 in satisfaction of the Jesuits' claims and the \$60,000 to the Protestant Committee of the Council of Public Instruction do not necessarily come out of the proceeds of the Jesuits' estates. They are to be paid out of any public money at the disposal of the Lieutenant-Governor in Council. It is not to be assumed that, if these estates are to be considered as charged with a trust in favour of education, the legislature will approve of any diversion of the proceeds of that trust, and the proceeds can only be applied in such a way as the legislature shall hereafter approve.

As already stated, if the proportion of the public money which the Protestant minority is to receive under this Act is an inadequate proportion, that is a matter which is capable of redress by the legislature chosen by the people of the whole province, and it may not be unimportant to observe, in this connection, that the Act received the unanimous approval of both Houses of the legislature of Quebec, in which the Protestant minority is ably represented by distinguished men in both political parties.

Even if the charge of diversion from the original trusts had more foundation than it has, it is obviously impossible for the federal government, in the exercise of the power of disallowance, to undertake to guard against misappropriations of the public funds, or of the public property, without assuming the power and responsibilities of regulating the public revenues and public domain of the provinces. To undertake the task of watching over the public appropriations of the provinces would be to incur the risk of almost inevitable injustice, for want of the means of correctly understanding the conditions which ought to guide the legislatures in such appropriations. The British North America Act must be held to have placed these matters within the power of the legislatures, which represent the people directly in regard to these questions, which the federal executive cannot be said to do. Even if the Act directly sanctioned a breach of trust, it would not be beyond the powers of the provincial legislature, however much its passage might be deplored.

It cannot be supposed, however, for reasons which have already been suggested, that the legislature of Quebec intends to commit, by this statute, for all future time, a breach of trust in regard to these estates. First, because it has every year made far more ample provisions for education, both for the majority and for the minority, than these estates, or any other part of the public domain charged with trusts could afford. Second, because the approval of the legislature to any final distribution of the proceeds of the estates is stipulated for on the face of the Act itself.

*Fourth.* A further objection has been that the sanction of Ontario is necessary to the disposition made by this statute of part of the estates in question. This objection can hardly be sustained from any legal point of view, even if it be regarded as one which could affect the validity of the statute. It is only put forward under the view that some power, regarding the subject, may remain in the province of Ontario, because these estates were devoted to educational purposes by a statute (prior to the union of the provinces), of a province of which, what is now the province of Ontario,



was once a part. The estates, however, are solely within the province of Quebec. They are public lands of that province, and any trusts with which they may be charged are trusts in favour of the people of that province. Neither the government nor the legislature of Ontario have ever asserted the slightest claim upon them, or the slightest right to interfere in regard to them, nor has either the government or the legislature of Ontario in any way given countenance to this objection.

It seems then quite clear, not only that the province of Ontario has no claim to these estates, but that its legislature would have no power to pass a statute with regard to them, as such a statute would relate to a matter outside of that province.

The Quebec statute, therefore, seeming clearly to be within the powers of the legislature which passed it, it appeared to be the duty of the government of Canada, not to exercise the power of disallowance with regard to it. To have revised the policy of the statute, irrespective of its validity, would have been to have assumed responsibilities for the exercise of authority in a domestic matter, within the control of the legislature, and in respect of which the legislature had been unanimous after considering the subject for years, and would have excited deep resentment among the people of the province.

After a delay of nearly six months, during which time the remonstrances against the allowance of the Act were of a merely formal character, and no agitation existed, his Excellency was advised to signify to the Lieutenant-Governor of Quebec that this Act, along with many others of the same session, would be left to its operation. Thereafter the agitation for disallowance commenced. A resolution in favour of that course was moved in the House of Commons and received the votes of 13 members out of a House of 215 members. Petitions have been presented to his Excellency also, asking that the power of disallowance should still be exercised.

It may be open to much question whether even the bare *power* of disallowance remains, after his Excellency's government has made its choice, and has decided that the Act shall be left to its operation, and has so informed the provincial government, but it is surely clear that, although the bare power may remain, it would be contrary to all constitutional usages that an Act, in respect of which that signification had been solemnly and formally made, should afterwards be disallowed. The inconvenience of such a course would be extreme. No provincial statute—even for the incorporation of a company—for the building of a railway—for effecting a loan—for a transfer of property, or indeed for any purpose, could be safely acted on until the expiration of a year from its transmission to the Secretary of State for Canada, even though declared by his Excellency in Council to be objectionable—lest within the year—on some new objection being stated—it should be disallowed. Even the supply bill of a province could not be safely acted on until the expiration of the year, and by that time the supplies would have lapsed.

His Excellency's government, having come deliberately to the conclusion that the Act was within the powers of the legislature which adopted it, and having signified that the Act would be left to its operation, has been moved to undertake the contestation of the validity of the Act in the courts, and especially before the Judicial Committee of the Privy Council.

It seemed to his Excellency's advisers that to pursue that course against a province, in regard to a statute which they considered within the powers of that province, would be a proceeding most hostile and also most unwise, in view of the relations which should exist between the provincial and the federal authorities, and would be a vexatious interference with the affairs of the province.

They have, therefore, declined to recommend an appropriation of any portion of the public revenues for litigation on this subject, against the government of Quebec, and they entertain the opinion that they are not called upon to enter into such litigation, and that the authority to pass the statute in question is so clear that any such proceedings must be carried on without any hope of success.

Furthermore—after the emphatic vote of the House of Commons on the resolution for disallowance, the government would be defying the opinion of the House, so

decidedly expressed, in undertaking thus to contest the soundness of the decision which was pronounced by that vote.

The contention has also been made that his Excellency should disallow the statute under review because it infringes the provisions of the 93rd section of the British North America Act. That section gives provincial legislatures power to make laws in relation to education, but provides that such laws shall not prejudicially affect any right or privilege, with regard to denominational schools, which any class of persons had at the time of the union, or should afterwards acquire under authority of the legislature of the province.

This statute, however, is not necessarily a statute in relation to education. It cannot be said to prejudicially affect any right to denominational schools, or the rights or privileges of any "class of persons in the province," with respect to denominational schools. The Jesuits' estates were certainly never charged with any trusts in respect to any schools of that description, although portions of their proceeds have, from year to year, been distributed among schools of all denominations.

It is unnecessary to repeat, in this connection, what has already been said as to the objection that the statute sanctions a breach of faith, but the argument there advanced applies to this objection as well.

Since the discussion in the House of Commons a point has been raised against the effectiveness, rather than the validity of the Quebec statute, viz., that the intention of the legislature must fail, because the grant is made to the incorporated Society of the Jesuits in the province of Quebec. The Act of incorporation, passed in 1887, is hereto annexed.

The act of incorporation having been long ago left to its operation, without objection, the Dominion government has considered that this is a question with which they have nothing to do, and they have, therefore, declined to ask Her Majesty's government to submit any question in relation to it for the consideration of the Judicial Committee of the Privy Council. The point on which doubts as to the effectiveness of the grant of the legislature seems to turn is that the legislature of Quebec could not, as it assumed to do in 1887, incorporate the Jesuits. It is contended, by those who sustain this view, that, in consequence of the early English statutes against the Jesuits, it is impossible for a colonial legislature to give members of that society corporate rights, or even to recognize their presence in the country. This view is not held by his Excellency's advisers. Considering the large powers of self-government which have been conferred, from time to time, on the various colonies, Canada included, and especially considering the powers given by the British North America Act in 1867, it is believed by his Excellency's government that it is clearly within the power of any one of the legislatures to pass statutes on such a subject, even though they may conflict with the early statutes relating to religion or in any way connected with religion. On this point the cases already cited in this memorandum, as to the power to alter or to repeal Imperial enactments affecting a colony, seem to have force.

The point which is here being answered implies that the early British legislation in relation to the Jesuits forms part of the constitution of the provinces. If that were so it might be answered, by the terms of the British North America Act, the legislature has power in each province, to alter the constitution of the province, but the theory involved in this objection depends on a very loose notion of the constitution.

The contention which has been raised in this connection has been carried so far as to assert that it is not in the power of a provincial legislature to make provisions inconsistent with the early statutes regarding the exercise of religion, which have never been repealed, although long fallen in desuetude in the United Kingdom. This is not, however, the view which his Excellency's government entertains, nor is it the view held by the large majority of those who recorded their votes on the resolution in the House of Commons, on this subject, at last session.

The free exercise of the power to regulate the civil right of the people, and the full exercise of the ample powers of self-government conferred by the British North America Act, would be almost worthless if they were restricted within the lines



marked out by obsolete enactments of the Parliament of Great Britain, which for many years have been found too restrictive of liberty to be put in practice in that country, and which certainly could not, at any time within the last century, have been applied to the colonies.

An Act to incorporate "Society of Jesus," chapter 38, of the province of Quebec.

(Assented to 18th May, 1887.

Whereas the Reverend Fathers of the Society of Jesus have prayed to be constituted into a corporation; and whereas it is expedient to constitute such religious community into a body politic and corporate like the other religious communities of this province.

Therefore Her Majesty, by and with the advice and consent of the legislature of Quebec, enacts as follows:—

1. The "Society of Jesus" shall be a corporation composed of the Reverend Fathers Henri Hudon, Adrien Turgeon, Leonard Lowire, George Kenney, Arthur Jones, and of all persons who now or may hereafter form part of the said society, in accordance with its rules, by-laws and regulations.

Under the above name it shall have perpetual succession.

It shall have a right to have a common seal, which it may alter at will, and to appear before the courts of justice in the same manner as any person may do.

It may possess, accept and acquire under any legal title movable and immovable property, which it may sell, alienate, hypothecate, give, lease, transfer, exchange or otherwise dispose of, by any title whatsoever; provided always, that the annual revenue in any diocese shall not exceed thirty thousand dollars.

2. The corporation shall not have the right under this Act to possess educational establishments elsewhere than in the archdiocese of Montreal and Ottawa and in the diocese of Three Rivers.

3. The corporation shall be governed in accordance with its community rules, and shall have powers to pass by-laws, rules and regulations with respect to the administration of its property, its management and internal government, the election, number and power of its officers and directors, the admission and dismissal of its members and, generally, all rules connected with the purposes of the corporation.

4. The corporate seat of the corporation shall be in the city of Montreal.

Another place in this province, within the present limits of the archdiocese of Montreal and Ottawa and of the diocese of Three Rivers may be selected later on by a by-law of the corporation.

5. The corporation may appoint officers, procurators or administrators and define their powers.

The signatures of the superior of the society in this province or of the procurator of its chief establishment shall be sufficient for all legal purposes.

6. This Act shall come into force on the day of its sanction.

*Mr. Hugh Graham to the Honourable the Secretary of State for Canada.*

RIDEAU CLUB, OTTAWA, 10th June, 1889.

Hon. J. A. Chapleau, Secretary of State, Dominion of Canada.

SIR,—I beg herewith to inclose a cheque for five thousand dollars and a petition to his Excellency the Governor in Council which I will thank you to bring before the Council at the earliest opportunity.

Yours truly,

HUGH GRAHAM.



*Petition of Mr. Hugh Graham.*

*To His Excellency the Governor General of Canada in Council.*

The humble petition of Hugh Graham, of the city of Montreal, Journalist, respectfully represents :—

1st. That grave doubts have been expressed and exist regarding the legality and constitutionality of the Acts of the legislature of the province of Quebec, intituled respectively : “An Act to incorporate the Society of Jesus” (50 Vic. cap. 13), and “An Act respecting the settlement of the Jesuits’ Estates,” (51 and 52 Vic., cap. 13).

2nd. That it is desirable that an opinion should be pronounced upon these Acts by the highest judicial tribunal in the Dominion.

3rd. That your petitioner, who is a citizen of the Dominion of Canada and a tax payer of the province of Quebec, acting on his own behalf and on behalf of others, is desirous that the powers conferred upon your Excellency in Council by section 37 of the “Supreme and Exchequer Court Act,” (Revised Statutes of Canada, chapter 135) which reads as follows :—

“The Governor in Council may refer to the Supreme Court for hearing or consideration any matter which he thinks fit to refer, and the court shall thereupon hear or consider the same and certify their opinion thereon to the Governor in Council,” should be exercised, in order that counsel may be heard by the said court upon the said questions.

4th. That in order to avoid any question with respect to provision being made by your Excellency in Council for the expenses incidental to such reference, your petitioner declares the willingness of himself and those associated with him to bear the necessary costs of the government : and as an evidence of such willingness, your petitioner herewith deposits his certified cheque on the Bank of Montreal payable to the order of J. M. Courtney, Esquire, Deputy Minister of Finance, for the sum of five thousand dollars, (\$5,000).

And your petitioner, as in duty bound, will ever pray.

Dated at the city of Montreal, this eighth day of June, eighteen hundred and eighty-nine.

HUGH GRAHAM.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 3rd day of August, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th July, 1889.

*To His Excellency the Governor General in Council.*

The undersigned has had referred to him the petition of Mr. Hugh Graham, of the city of Montreal, requesting your Excellency to refer to the Supreme Court of Canada, for hearing and consideration, an inquiry as to the constitutionality of the Acts of the legislature of the province of Quebec, intituled, respectively, “An Act to Incorporate the Society of Jesus” (50 Vic., cap. 38), and “An Act respecting the settlement of the Jesuits’ Estates” (51 and 52 Vic., cap. 13), and he has the honour to report as follows :

The former of these Acts—“An Act to Incorporate the Society of Jesus,” was assented to by the Lieutenant-Governor of Quebec, and went into force on the eighteenth day of May, 1887, and no request has been made for its disallowance, nor was any question raised as to its validity, so far as the undersigned is aware, until nearly eight months after the passage of the second of the two statutes mentioned in Mr. Graham’s petition—the “Act respecting the settlement of the Jesuits’ Estates,” which was assented to and went into force the twelfth day of July, 1888.

It may be further observed, as regards the Act of Incorporation above mentioned, (of 1887), the validity of which has lately been called in question, that that Act differs only from the Act incorporating the Jesuits, passed by the Quebec legislature eighteen years ago, (chapter 46 of 1871), to which no exception has ever been taken, so far as the undersigned is aware, in that the Act of 1871 incorporates the Jesuits living within the city of Quebec, while the Act of 1887 is co-extensive with the provincial jurisdiction, and it differs also in certain other matters of mere detail, which do not appear to concern the validity of the enactment in any way.

Mr. Graham informs your Excellency, that "grave doubts have been expressed and exist regarding the legality and constitutionality" of the two Acts, first above mentioned, and that "it is desirable that an opinion should be pronounced upon the Acts by the highest judicial tribunal in the Dominion." He appears to have no other interest in the subject than as "a citizen of the Dominion of Canada and a tax-payer of the province of Quebec." He is, no doubt, actuated by public spirit, and by a desire to aid in removing causes of uneasiness and perplexity from the public mind.

In his position as "a citizen of the Dominion of Canada and a taxpayer of the province of Quebec," his rights, in respect to all such questions as may arise under the two statutes which his petition refers to, are mainly, if not altogether, under the care of the legislature and government which have been chosen to administer public affairs in that province under the provisions of the British North America Act. To state this proposition more explicitly, and to point out what appears to be the petitioner's position under the constitution, as "a citizen of the Dominion and taxpayer of the province," in regard to the enactments which he now desires to be made the subject of judicial decision, the undersigned begs to call attention to the following points:

First—The petitioner was duly represented in the legislature by which these enactments were adopted and his representatives there seem to have concurred in the adoption of both these statutes almost with unanimity.

Second—He had the right of petition and remonstrance against the adoption of these enactments. He has not informed your Excellency whether he availed himself of that right.

Third—If he does not partake of the doubts which he informs your Excellency "have been expressed and exist regarding the legality and constitutionality" of these Acts, it would seem reasonable that he should leave to those who are immediately interested, and who, perhaps, entertain the doubts which his petition refers to, the duty of having the validity of these Acts determined by the courts, or of addressing to your Excellency such arguments as might indicate that their doubts are well founded and reasonable.

Fourth—If the petitioner shared these doubts, he had, further, the opportunity of representing them to your Excellency and of showing what they were founded on, before the dates when your Excellency signified to the Lieutenant-Governor of Quebec that these Acts, respectively, would be left to their operation. Ample opportunity was afforded for such expression, as both the Acts remained without action being taken on them by the government of Canada for several months after their final passage in the province of Quebec. The petitioner did not make his present request until long after your Excellency had intimated that the Acts referred to would be left to their operation, and until, by lapse of time in the case of the Incorporation Act, as well as by the obligations of public faith and honour in regard to both of them, it had ceased to be in your Excellency's power to interfere with their operation.

Fifth—The petitioner has still the opportunity of calling the attention of the government of his province to the desirability that the statutes referred to should not be acted on, by the transfer of the public money and property being completed, as contemplated by the "Act respecting the settlement of the Jesuits Estates," until the doubts referred to have been set at rest.

Sixth—The petitioner, has furthermore, the opportunity of calling on the Attorney General of his province to take legal proceedings, in accordance with the law of his own province, to test the validity of the Act of incorporation. If that Act should be



decided to be invalid and unconstitutional there can be little doubt that the second Act will be nugatory, as the grant of money and land which the second Act authorizes is, by its terms, to be made to the corporation established by the "Incorporation Act." It does not appear that the petitioner has made any such application to the Attorney General of Quebec, but it may be proper for the undersigned to call the attention of your Excellency to the explicit provision on this subject in the code of civil procedure of the province of Quebec.

Articles 997 and 998 of that code, as amended, read as follows :—

"997. "In the following cases ;

1. "Whenever any association or number of persons act as a corporation without being legally incorporated or recognized ;

2. "Whenever any corporation, public body or board violates any of the provisions of the Acts by which it is governed, or becomes liable to a forfeiture of its rights, or does or omits acts, the doing or omission of which amounts to a surrender of its corporate rights, privileges and franchises, or exercises any power, franchise or privilege which does not belong to it, or is not conferred upon it by law ;

"It is the duty of the Attorney General to prosecute, in Her Majesty's name, such violations of the law, whenever he has good reason to believe that such facts can be established by proof in every case of public general interest ; but in any other case he is not bound to do so unless sufficient security is given to indemnify the government against all costs to be incurred upon such proceeding ; and in such case the special information must mention the name of the person who has solicited the Attorney General to take such legal proceedings, and of the person who has become security for the costs."

998. "The summons for that purpose must be preceded by the presenting to the Superior Court, or to a judge, of a special information containing conclusions adapted to the nature of the contravention, and supported by an affidavit to the satisfaction of the court or judge and the writ of authorization of the court or judge.

"The writ, as well as the writs of *quo warranto mandamus* and prohibition, must be in the same form as the ordinary writs of summons."

These articles seem to afford ample means of testing the validity of the Act of incorporation. The Society of Jesus, in the province of Quebec, is undoubtedly acting as a corporation, as is shown in the preamble to the Act respecting the settlement of the Jesuits' Estates, and it is so acting "without being legally incorporated or recognized", as mentioned in article 997, if the Act of incorporation is invalid.

If the doubts which the petitioner refers to are sufficiently grave and well founded to justify your Excellency's interference with such statutes, by insisting on their validity being made the subject of contention in the court, they are sufficiently grave and well founded to induce the Attorney General of Quebec to proceed under the enactments just cited.

The petitioner having, by the constitution, as a "citizen and ratepayer" the safeguards and remedies which are above mentioned, it seems unnecessary, and far out of the usual course, that he should pass all these remedies by and ask your Excellency to intervene, by a proceeding which is intended, as the undersigned will presently suggest, for widely different purposes.

It may be added here that the questions which he desires to have raised and settled may be raised in the courts at any time, by any person who has a direct and substantial interest affected by either statute, and that in any litigation which may so occur, or in the proceedings which may be instituted by the Attorney General of Quebec at the instance of the petitioner, resort may, and almost inevitably will be, had to the "highest judicial tribunal in the Dominion," which is the court by which the petitioner alleges, "an opinion should be pronounced upon these Acts."

If the Attorney General of the province of Quebec, in view of the specific enactments of the Code of Civil Procedure before cited, does not deem it proper to interfere, and if no individual having a direct and substantial interest in the questions raised should think it proper to interfere, or should think the doubts which the petitioner refers



to sufficiently grave and well founded to justify legal proceedings being taken, it is difficult to see on what grounds your Excellency should be called on to compel litigation on the result of which no right of the Dominion of Canada would depend, and which could not even be serviceable as affording a guide to any action on the part of your Excellency's government.

The petitioner, however, considers evidently, that in addition to the rights and remedies which are above mentioned, he may properly call on your Excellency to exercise, in regard to these Acts, the power conferred on you by the "Supreme and Exchequer Court Act" by referring to the Supreme Court of Canada, for an opinion, the questions which have arisen respecting their validity.

As to this the following considerations are respectfully submitted :

The provision which confers that power on your Excellency was undoubtedly intended to enable the Governor General to obtain an opinion from the Supreme Court of Canada in relation to some order which his government might be called on to make, or in relation to some action which his officers might be called on to adopt. For the guidance of your Excellency, or of your officers, the provision may be a valuable one, but, used as a means of solving legal problems in which the government of Canada has no direct concern, however much they may interest or excite the public mind, as the petitioner seems to propose, or used to compel an adjudication on private rights and interests, it would be perverted, the undersigned humbly submits, into an arbitrary and inquisitorial power, anticipating and interfering with the ordinary course of justice. Used in that manner it would become in time a means of depriving the provincial courts of their functions to a considerable extent, as every important and influential interest affected by legislation would seek the opinion of the Supreme Court of Canada by application to the Governor in Council to have such opinion obtained, and the provincial courts would be, in a great degree, bound by the opinions so pronounced, however inadequately the parties concerned might have been represented. The rights of parties concerned would be practically concluded without their having had the opportunity which the laws of the respective provinces give them of submitting these rights voluntarily for decision in the mode, and on the proof, which may seem best adapted to elicit a thorough investigation. If the parties interested did not take part in such inquiries before the Supreme Court of Canada the *ex parte* decisions on their rights would be an unsatisfactory method of disposing of the questions involved,—if they did participate, under the compulsion of the proceeding by which the government in sending the question to the court had actually acted as a plaintiff in calling them to the bar of the tribunal, the Supreme Court would, to that extent, be turned into a court of first instance instead of being, what Parliament declared it should be, a court of appeal.

Those whose rights are in any way affected by legal questions should, unless some interest on the part of the government being involved, a different course is necessary, be permitted to raise and discuss such questions in the form, at the time, and before the tribunals of their own choice, without being hampered by an opinion certified by the highest tribunal on an *ex parte* argument, it may be, or, at any rate, without the presentation of facts and testimony which may have an important influence on the decision which should be arrived at, and which are presented in the course of ordinary legal proceedings.

An enactment similar to that contained in the Supreme and Exchequer Court Act, to which the petitioner refers, exists in England in relation to the Privy Council, and enables Her Majesty's government to ask the Judicial Committee of the Privy Council to certify an opinion to Her Majesty on questions of law which may be referred to that committee by Her Majesty. In no case, that the undersigned has been able to find, has that power been used, excepting when some action on the part of Her Majesty's government or her officers required to be guided by judicial decision, and then very rarely. In no case does it seem to have been used at the instance, or on the application of the subject, whether possessing special interest in the questions raised, or having only an interest as one of the "citizens and taxpayers" of the country. Of the vast number of colonial statutes which have been passed since that provision was enacted, scores have

been disallowed and thousands have been left to their operation, but not one has ever been referred to the Judicial Committee for adjudication on its constitutionality, even when a disallowance was petitioned for.

Out of the seven instances in which the undersigned has been able to find that Her Majesty's government have made use of that power and asked the advice of the Judicial Committee, three were cases in which Her Majesty desired to be advised as to the remission by her of fines and penalties, said to have been illegally imposed, one was a case in which Her Majesty had been asked to restore the precedence of certain judges, one was a case in which Her Majesty desired to be advised as to the rescission of certain illegal orders made by a colonial court, one was a case in which Her Majesty had been prayed to remove a colonial judge for misconduct, and one was a case in which Her Majesty had been asked to order that an advocate should be allowed to practice at the bar of the Royal Court of Jersey, where the number of practitioners was supposed to be limited by regulation. In this latter case the Judicial Committee declared :

"With regard to our jurisdiction, as well as to the argument of the inconvenience arising from a limited bar, we must observe that this petition is not referred to us as a legislative body, having legislative authority, or to advise the Crown, *acting in its legislative capacity*, but as members of the Judicial Committee of the Privy Council, *possessing only power to advise the Crown judicially.*"

In all these cases the subject petitioning had an important right, in respect of which the courts could not give relief, and Her Majesty only could do so.

It may be safely concluded, therefore, that the object and scope of the enactment are, not to obtain a settlement by this summary procedure of legal questions, even of great public interest, or to obtain an adjudication upon private rights, but solely to obtain advice which is needed by the Crown in affairs of administration.

This being the case, your Excellency might, not inappropriately, give to the petitioner an answer like that which was given on the 13th of December, 1872, by the Registrar of Her Majesty's Privy Council to a request that the opinion of the Judicial Committee might be obtained as to the validity of a statute of New Brunswick. In that answer it was stated that Her Majesty could not be advised to refer to a Committee of the Council in England, a question which Her Majesty had no authority to determine, and on which the opinion would not be binding on the parties.

Indeed there seems much reason to doubt, both from this authority and from general principles, that the decision of the Supreme Court on such a reference would be binding on any parties, or on any interests involved. It would be simply advice to your Excellency as to the opinions entertained by the members of the court.

The precedents in Canada are like those in Great Britain. Under the Canada Temperance Act two questions of law were referred in order that it might be determined whether the Governor in Council might properly go on with the steps to bring the Act into force in two districts in which it had been petitioned for, but where the validity of all the steps taken to bring the Act into force and of everything which might be done under the Act, if it were proclaimed, would depend on the answers which might be given to the questions raised.

On another occasion a question was asked of the court as to the liability of the Dominion government to provide for the imprisonment and maintenance of prisoners of a certain class.

On another occasion the court was asked to advise on the validity and effect of a statute of British Columbia, relating to the Supreme Court of that province, not with any regard to action as to disallowance, but because the status, functions and places of residence of the judges of that province depended on the result, and because the government of Canada required to know, in making judicial appointment in that province, whether such appointment should be made in conformity with that statute or regardless of it. There was also a reference to the Supreme Court of a special case concerning the "Liquor License Act of 1883." This was not made, however, under the enactment cited by the petitioner, but under a special enactment contained in cap. 32 of 47 Vic., reciting that doubts had arisen as to the power of the Parliament of Canada to pass



the "Liquor License Act of 1883," and enacting that prosecutions should not be carried on under that Act till the question should be determined. The statute further enacted that the Governor in Council might refer the said question to the Supreme Court of Canada, also, that the Lieutenant-Governors of the provinces might become parties to the case to be so referred, that counsel for the parties should be heard and that the decision should be final, unless an appeal to the Judicial Committee of the Privy Council should be had by reference by Her Majesty to that committee.

The object of this proceeding was, as stated in the Act, to enable a conclusion to be arrived at on the legal question involved, before prosecutions should be instituted, by the officers of the government of Canada, for infringement of the "Liquor License Act of 1883" because, under such prosecutions great loss, oppression and confusion might be found to have been inflicted if the "Liquor License Act of 1883," were found to be unconstitutional, and if its provisions had been enforced while that question was undetermined.

A similar reference was made, under the "Railway Act," not long ago by the Railway Committee of your Excellency's Privy Council, in order that the committee might obtain from the court the advice or instruction of that authority as to the order which they should make, in a matter affecting very important public interests.

These references were therefore in the line of the references made by Her Majesty's government, and were in relation to proceedings which the government of Canada or its members or officers were called on to take.

With regard to the Act incorporating the Jesuits in the province of Quebec, and with regard to the Act "Respecting the settlement of the Jesuits' Estates," no such reasons exist for such a reference. Your Excellency has no action to take in respect to the statutes on which advice can be required. The Act of incorporation was, as before remarked, left to its operation long ago, without a request being made for its disallowance. No power now remains in your Excellency to disallow it. The Act respecting the settlement of the Jesuits' Estates was assented to by the Lieutenant-Governor of Quebec on the twelfth day of July, 1888, was transmitted to the Secretary of State of Canada on the eighth day of August, 1888, and on the nineteenth day of January, 1889, the Lieutenant-Governor of Quebec was notified that it would be left to its operation.

No doubt existed then, or exists now, on the part of your Excellency's advisers, that the enactment is within the power of the legislature of Quebec. After the decision of your Excellency in Council that the Act should be left to its operation, and after the notification of that fact to the Lieutenant-Governor of Quebec, it may be doubted whether even the power of disallowance remains, but it seems quite clear that it would be contrary to all constitutional usages that an Act, in respect of which that signification has been formally made, should afterwards be disallowed. The inconvenience of such a practice would be extreme. No provincial statute even for the incorporation of a company—for the building of a railway—for effecting a loan for the transfer of property, or indeed for any purpose, could be safely acted upon until the expiration of a year from its transmission to the Secretary of State for Canada, even though declared by the Governor General in Council to be unobjectionable, lest, within a year, on some new objection being started, it might be disallowed.

Your Excellency is doubtless aware, that, of the hundreds of Acts which have been passed every year by the legislatures in Canada, there are many statutes of doubtful validity, and there have been some which have been declared, by the advisers of the Governor General, from time to time, to be beyond the powers of the legislatures which passed them. Most of these have been left to their operation and their validity has been left to be tested by those interested in doing so. Indeed this course has nearly always been followed, in the case of Acts of doubtful constitutionality, excepting where some interference with the powers of the federal government would result, or where serious confusion or public injury was likely to ensue from such a course. If your Excellency were to be called upon to refer to the Supreme Court the question as to the validity of every enactment in respect of which "grave doubts have been expressed and exists," on the part of persons, within the province concerned, or outside of it, a new



system, not in force in any other country, one which is of very doubtful utility, considering the facilities which exist in every part of the country for raising and deciding legal questions by the ordinary process of law, and one which may be very burdensome, harassing and expensive for the provincial governments and private persons, will have been established, under an enactment not intended to be so used. The Acts referred to in the petition relate only to the province of Quebec. They do not conflict in any degree with the powers of the Parliament of Canada, or with the rights and powers of your Excellency.

They do not concern in any way your Excellency's officers, and they do not affect the revenue or property of Canada or any interest of the Dominion.

They should, therefore, in the opinion of the undersigned, be left to the responsibility of those whom the constitution has entrusted with the power to pass enactments relating to "property and civil rights," relating to the public property and money of the province, relating to the "incorporation of companies with provincial objects," relating to "education," relating to matters of "a merely local or private nature in the province," and relating to the other matters which such enactments directly affect.

There are other reasons, although perhaps of less importance, why, in the opinion of the undersigned, the petition cannot be favourably entertained. Without intimating, as has already been observed, that he has any interest beyond that of any other citizen and taxpayer, and without stating that he has even any doubts as to the validity of the legislation which he proposes should be tested, with the plain declarations of your Excellency's advisers that the Acts referred to are within the powers of the legislature, and with the declaration, which will be hereafter referred to more particularly, of the House of Commons of Canada, that interference with these Acts, on the part of your Excellency was not to be advised, the petitioner, in making the present request, proposes a course which would result in the government of the province of Quebec, or the persons in whose favour these Acts were passed, being put to expense in defending the validity of these enactments in the Supreme Court of Canada and, perhaps, ultimately on appeal, before the Judicial Committee of the Privy Council, unless they would submit to the decision being *ex parte*, in which case it would have very little weight as a judicial determination.

The petitioner has not, in the matter of costs, subjected himself to the same obligations as an applicant would incur in the somewhat analogous case in which a private person seeks to use the name of the Crown, or of the Attorney General, in a civil proceeding in a court of justice. He declares in his petition that he is willing to bear "the necessary costs of the government," and, "as an evidence of such willingness," he has deposited his certified cheque on the Bank of Montreal, payable to the order of the Deputy Minister of Finance for the sum of five thousand dollars. This deposit is therefore made for the purpose of securing the "necessary costs of the government" of Canada, should a reference be made. So far as now appears, the case would seem to be one in which the government of Canada would be justified in appearing as a party to the reference or in incurring any costs in respect thereto, the Dominion government not having any immediate or direct interest in the controversy. It is not the practice of Her Majesty's government to interfere on a reference for advice, or to retain counsel to argue that the advice should be given one way or the other. Indeed, to do so would appear unseemly, and inconsistent with the idea of seeking advice and guidance merely, which is the theory on which such applications are made. The offer to pay the costs of the government, as distinguished from the costs of the only parties interested in the validity of the legislation in question, is not therefore, a very onerous one, nor would it afford any security to those who might deem it to be their duty to support or oppose the allegation that the Acts in question were within the competency of the legislature of Quebec.

As your Excellency's government would be under no expense, even if the reference should be made, and would not in any event feel justified in availing itself of private generosity to enable it to carry on public affairs, the cheque inclosed by the petitioner may properly be returned to him.

The undersigned would remind your Excellency that, as regards the Act for the settlement of the Jesuits' Estates, a resolution in favour of disallowing the same was presented to the House of Commons of Canada during the last session of Parliament, and was, after thorough discussion, negatived by an overwhelming majority. The will of the House of Commons that that Act should be left to its operation in the usual way, as being probably within the powers of the legislature which passed it, was thereby unequivocally expressed. The attempt to attack the Act in the courts by the use of your Excellency's power to seek advice from the Supreme Court of Canada, would not, in the opinion of the undersigned, be consistent with the deference which should be shown to that branch of parliament, and would not be justifiable on the ground that the doubts which had then been asserted continued to be expressed by some who do not acquiesce in the conclusion then arrived at.

The undersigned would therefore recommend that the petitioner be informed, when his cheque is returned to him, that his suggestion is not one that can properly be complied with.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Petition of J. R. Dougall and others to His Excellency the Governor General.*

*To His Excellency the Governor General in Council :*

The petition of the undersigned loyal subjects of Her Majesty, residing in the province of Quebec,

*Humbly Represents :*

That heretofore, to wit, on or about the twenty-sixth day of March last past, your petitioners with divers other loyal subjects of Her Majesty and ratepayers and electors, residing in said province, and forming part of the Protestant minority of said province, did humbly present to your Excellency in Council, a petition in appeal, under section 93 of the British North America Act, in the words following, to wit :

*To His Excellency the Governor General in Council :*

"The appeal and petition of the undersigned, loyal subjects of Her Majesty, residing in the province of Quebec, made pursuant to section 93 of the British North America Act, humbly sheweth :

"That the appellants, your petitioners, are ratepayers and electors residing in said province, and form part of the Protestant minority of the population of said province.

"That at the date of confederation there were certain estates and property of the late Order of Jesuits, which under the provisions of the Act 19-20 Vic., c. 54, (chapter 15 of the Consolidated Statutes of Lower Canada) formed the 'Lower Canada Superior Education Investment Fund,' of which fund the Protestant minority of the province were entitled to a share and portion.

"That the Act of the legislature of the province of Quebec, 51-52 Vic., cap. 13, intituled 'An Act respecting the Settlements of the Jesuits' Estates,' has abolished said 'Lower Canada Superior Education Investment Fund,' and provided that the said estates and property may be applied to purposes other than those to which said fund was appropriated by said Act, 19-20 Vic., cap. 54 (chapter 15 of the Consolidated Statutes of Lower Canada).

"That the said Act of the legislature of the province of Quebec, 51-52 Vic., cap. 13, has thus injuriously affected the rights of the Protestant minority by abolishing said fund.

"That the Society of Jesus, or Order of Jesuits, had not, and have not, any right, title or claim whatsoever to receive from the said province of Quebec the sum of four



hundred thousand dollars appropriated by the said Act, 51-52 Vic., cap. 13, and said Act appropriating that sum, and also the Laprairie Common, and granting \$60,000 to the Protestant Committee of the Council of Public Instruction, is prejudicial to the rights and interests of the Protestant minority of said province.

"That the submission of the said alleged settlement of the Jesuits' Estates to the Pope of Rome, as set forth in the preamble of said Act 51-52 Vic., cap. 13, is unconstitutional as being contrary to the provisions of an Act passed in the first year of the reign of Queen Elizabeth, and declared by the Imperial Act 14 George III., cap. 83, to have force and effect in this province, and said unconstitutional Act is prejudicial to the interests of the Protestant minority of this province.

"Wherefore, your petitioners hereby humbly appeal to your Excellency in Council, against said Act of the legislature of the province of Quebec, 51-52 Vic., cap. 13, and pray that your Excellency in Council will be pleased to disallow said Act and annul and set aside the same, and your petitioners, as in duty bound will ever pray."

That although several months have elapsed since the presentation of said petition, no answer hath been had to the prayer thereof, nor have your petitioners been afforded any opportunity of being heard before your Excellency in Council, either personally or by counsel learned in the law.

That your present petitioners are advised by counsel learned in the law, that they are entitled to be heard either personally or by counsel in support of their said petition and appeal.

And therefore your petitioners pray that your Excellency in Council may be pleased to afford your petitioners an opportunity of being heard upon the said appeal and petition at such time and place as your Excellency may appoint; and further humbly pray that your Excellency may be graciously pleased to fix an early date for said hearing, lest the delay allowed for disallowing said Act should pass before they have had an opportunity of being heard, and your petitioners, as in duty bound, will ever pray."

Montreal, July, 1889.

J. R. DOUGALL, 294 Drummond St., Montreal.  
 J. A. BAZIN, 469 St. Urbain " "  
 HENRY MORTON, 392 Mountain " "  
 JAMES BEALL, 242 St. James " "  
 and nine others.

*REPORT of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 20th September, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd August, 1889.

*To His Excellency the Governor General in Council:*

The undersigned, to whom has been referred a petition from J. R. McDougall and others, dated July, 1889, praying that your Excellency in Council might be pleased to afford the petitioners an opportunity of being heard upon the appeal in petition referred to in the said petition, and should fix a day therefor, has the honour to report as follows:

The petition in question states that on or about the 26th March last, the petitioners and others, forming a part of the Protestant minority of the province of Quebec, did "present a petition in appeal under section 93, of the British North America Act, to your Excellency, praying that your Excellency would be pleased to disallow the Act respecting the settlement of the Jesuit Estates, passed by the legislature of the province of Quebec, in the year 1888, and so annul and set aside the same."



The undersigned has the honour to observe that at the time of receipt of the petition referred to as having been presented on or about the 26th March last, all the questions relating to the Act referred to were discussed and voted on in the House of Commons.

Subsequently a number of the petitioners requested permission to approach your Excellency in person to ask for the disallowance of the Act, which permission your Excellency was pleased to grant. The request set out in the petition of March did not ask for a hearing before your Excellency in Council, and did not set out anything that would appear to bring the complaint of the petitioners within the terms of an appeal within the 93rd section of "The British North America Act," consequently the petition was treated merely as a request for disallowance. Inasmuch, however, as the petition now being reported on expresses a desire that the petitioners be heard, and as they may be able to show, if so heard, that there is ground for taking action on the part of your Excellency, under the 93rd section of "The British North America Act," irrespective of disallowance, the undersigned had the honour to recommend, soon after the receipt of the petition of July last, that a day be fixed for the purpose of such hearing as early as a full attendance of the members of the Committee of Her Majesty's Privy Council for Canada could be had, and that on such day the petitioners be heard by the usual committee of council.

A day for that purpose could not conveniently be named before the present time, owing to the absence of some members of council.

The undersigned has the honour now finally to recommend that, should your Excellency see fit to name a day for the purpose of hearing the appeal in question by the committee of council aforesaid, the petitioners be so informed.

Respectfully submitted,

HECTOR L. LANGEVIN,  
*For the Minister of Justice.*

## QUEBEC, 52nd VICTORIA, 1889.

### 3RD SESSION—6TH LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th June, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1890.

*To His Excellency the Governor General in Council :*

The undersigned respectfully recommends that the following Acts passed by the legislature of the province of Quebec in the session of 1889, the chapters of which are given in the annexed schedule be left to their operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

#### *Schedule.*

Chapters 1 to 11, 13 to 29, 31 to 40, 42 to 75, 78, 81 to 88, 94 to 118.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st July, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st June, 1889.

*To His Excellency the Governor General in Council.*

The undersigned has the honour to report upon the Act of the legislature of the province of Quebec, assented to on the 21st of March 1889, intituled "An Act to amend the law respecting District Magistrates, (Chapter 30) a certified copy of which Act was received by the Secretary of State on the 2nd April, 1889.

By chapter 20 of the Acts of the province of Quebec for the year 1888, intituled "An Act to amend the law respecting District Magistrates," the legislature of Quebec purported, among other things, to give the Lieutenant-Governor in council power to abolish the circuit court in the district of Montreal.

This court had been presided over by the judges of the superior court, who are judges appointed by the Governor General, under the terms of the "The British North America Act." The statute referred to also purported to empower the Lieutenant-Governor in council to establish, instead of the circuit court, a court of record, under the name of "the district magistrates court" of Montreal.

It was further provided that such "district magistrates court" should be composed of two justices to be called "district magistrates of Montreal," to be appointed by the Lieutenant-Governor in council, the salary of each magistrate to be \$3,000. per annum, and that the powers and duties of the judges of the superior court, should be transferred to the "district magistrates," so to be appointed.

On the 3rd September, 1888, the undersigned reported to your Excellency that in his opinion the principal provisions of that Act were clearly in excess of the powers conferred on provincial legislatures by the British North America Act, and were invasions of the powers conferred exclusively on the Parliament of Canada and on the Governor General, and he, therefore, recommended that the Act be disallowed, and, by an Order in Council, dated 7th September, 1888, the same was disallowed accordingly.

On the 2nd day of October following, the Lieutenant-Governor of the province of Quebec transmitted to your Excellency's government an order of his Executive Council, discussing and protesting against the disallowance of said Act, and that minute of council having been referred to the undersigned, he reported at length thereon to your Excellency.

The report was approved on the 22nd day of January last, and was transmitted to his Honour the Lieutenant-Governor of Quebec. That report contains a statement of the reasons which, in the opinion of the undersigned, not only justified, but made necessary, the exercise of the power of disallowance in the instance referred to.

The Act, which is the subject of this report, is substantially a re-enactment of the principal provisions of the disallowed Act. It provides :

2544a. "The Lieutenant-Governor in Council may, by proclamation, establish in the city of Montreal, a magistrate's court under the name of 'Magistrates' court of the district of Montreal.'"

2544b. "Such court may be composed of two district magistrates, chosen from among the members of the bar of the province, of ten years' practice, and appointed under the great seal of the province, by the Lieutenant-Governor in Council."

2544c. "No such district magistrate, while in office, can be a Senator or Member of the House of Commons, the Executive Council, Legislative Council or Legislative Assembly of the province, nor fill any other office under the Crown,"

2544d. "Such magistrates shall hold office during good behaviour, and cannot be removed from office except upon the joint address to the legislative council and legislative assembly."

2544e. "The salary of each of such magistrates shall be three thousand dollars per annum, payable out of the consolidated fund."

2544f. "One of these magistrates shall preside over the court alone, but they may both sit at the same time in different rooms, and exercise all the powers of the court."

The court is given ultimate jurisdiction in all suits wherein the amount demanded is less than one hundred dollars (subject to certain exceptions) in all suits for school taxes or school fees, and all suits concerning assessments for the building or repairing of churches, parsonages and churchyards, whatever may be the amount of such suits. Also, in all suits for the recovery of rates, taxes, assessments, penalties, damages or sums of money whatever, due or payable in virtue of the Municipal Code, &c., or under the laws respecting abuses prejudicial to agriculture, and in all suits for the recovery of penalties incurred, and of sums due to the treasury under the license law.

The Act further provides that all proceedings had and commenced before the court established by the Act 51-52 Vic. cap. 20, (the disallowed Act) may be continued "before the court established by this Act," which court is authorized to terminate such proceedings as if they had never been interrupted, and as if they had commenced before the court established by this Act. The judgments rendered by the court established by the said Act, 51-52 Vic. cap. 20, are authorized to be executed by the court established by this Act.

By a comparison of the two Acts it will be found that their provisions are substantially the same, excepting that the jurisdiction of the Circuit Court has not been abolished. Nearly all the objections which the undersigned pointed out in reference to the former Act are equally applicable to the latter, inasmuch as it purports to confer on his Honour the Lieutenant-Governor authority to appoint judges to exercise in the new court established, the large powers which the judges of the Superior Court held and exercised in relation to the circuit court before the union and since, and it purports to regulate the qualifications, salaries and tenure of office of such newly created judges. The Act now under review also repeats the peculiar provision to which attention was directed in the report of the undersigned, approved on the 22nd day of January last, in which it is declared that "no such district magistrate, while in office shall be a Senator or Member of the House of Commons, &c."

The fact that a provincial legislature cannot regulate the eligibility for membership of the Senate or House of Commons seemed so clear; that the undersigned



suggested in his former report, that the intention in the mind of the draughtsman of the statute was perhaps to provide that forfeiture of office should result from appointment to the Senate, or election to the House of Commons, although a different meaning had been expressed. The repetition of the enactment in the same terms, in the Act of last session, indicates that the expression was not caused by inadvertence, and that the legislature of Quebec intended to establish a disqualification for the Senate, contrary to the provisions of British North America Act, and for the House of Commons, over the qualifications of whose members, the Parliament of Canada alone has control. The Act of 1889, is further objectionable as an attempt to make valid, proceedings taken under a statute, disallowed for unconstitutionality.

It seems unnecessary here to repeat the observations which the undersigned has already made in the two reports which have already been approved by your Excellency in respect of the unconstitutional character of provisions such as are contained in the Act in question.

The undersigned has therefore, to recommend that the Act under review, namely, "An Act to amend the law respecting District Magistrates," passed by the Quebec legislature and assented to on the 21st day of March, 1889, being ch. 30 of the Acts of last session of that legislature, be disallowed.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Proclamation disallowing the above mentioned Act, published in the Canada "Gazette" on the 6th day of July, 1889. Vol. XXIII., No. 1, p. 9.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 28th January, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1890.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration his report on the following Acts passed by the legislature of the province of Quebec in the session of 1889, authentic copies of which were received by the Secretary of State on the 2nd April, 1889.

Chapter 12.—An Act respecting the Executive Administration of the laws of this province.

The undersigned is of opinion that this Act, for the reasons stated in his report upon a similar Act passed by the legislature of the province of Ontario in the year 1888, *ultra vires* is of a provincial legislature in great part, if not altogether. He would in this connection, call attention to the fact that in the year 1869, the right of a Lieutenant-Governor to commute and remit sentences for criminal or penal offences, whether under provincial or federal law, was called in question, and the matter having been referred to the (Imperial) law officers of the Crown, Earl Granville, the then colonial secretary, sent a despatch to your Excellency's predecessor of which the following is a copy :—

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 24th February, 1869.

"SIR,—I have the honour to acknowledge the receipt of your despatch No. 7, dated the 24th December last, inclosing a minute of your Executive Council respecting the power of pardon claimed by the Attorney General of Ontario, on behalf of the Lieutenant-Governor of that province.

"I caused a copy of your despatch and of its inclosures to be referred to the law officers of the Crown, and I am advised that the prerogative of mercy is properly resident in the Governor General of Canada in virtue of his commission.

"Canada is, by section 3 of the British North America Act of 1867, to form one Dominion with four provinces, and by section 9, the executive government and authority is declared to continue and to be vested in the Queen. As the power of pardoning is, by the law of England, and her settlements, part of the royal prerogative the power of pardoning is, at and after the passing of the British North America Act, to be found in the Queen, or in those to whom the Queen deposes it, except so far as the Queen's delegation of this power is controlled by statute. It is true that, before the passing of this Act, the power of pardoning was vested in the Lieutenant-Governors of the several provinces, but that power was withdrawn, not only by the revocation of the letters patent by which it was conferred, but also as I am advised, by the Queen's Act in assenting to the British North America Act, by which Act the authorities given to the several provincial Lieutenant-Governors were revoked, except so far as is otherwise therein provided. Among the revoked powers, the power of pardoning would be one, unless especially excepted.

"Now the Lieutenant-Governors of the provinces, under the new system, are to be appointed, not directly by the Queen, but by the Governor General in Council, and the new Lieutenant-Governors would not take the power of pardoning *virtute officii*, unless it were so given them by the Act.

"The whole constitution of the provinces was changed by the Act of Union and the delegated powers of government necessarily ceased.

"No such power is given or retained to or for them in the part of the Act which is headed "Provincial Constitutions," nor can it be properly said that the prerogative of mercy is part of the administration of justice:—still less can it be argued that the Lieutenant-Governor possesses the power of pardon because the administration of justice in the provinces is reserved to the provincial legislature."

I have, &c.,

GRANVILLE.

For the purpose of testing the legality of this legislation a suit was instituted by the undersigned in the High Court of Justice of the province of Ontario which will probably be adjudicated upon at an early day.\* Should the ultimate decision establish that the Ontario Statute, above referred to, is inoperative, the one now under discussion, as well as the former, will have no effect. The undersigned therefore, recommends that the power of disallowance be not exercised in respect to it.

Cap. 18.—An Act to amend the law respecting fishing in this province.

In recommending that this Act, which is only an amendment to the regulations upon the subject of fishing, contained in the Revised Statutes of the province of Quebec, be left to its operation, the undersigned would again express his doubts as to the right of a provincial legislature to pass any enactment dealing with the fisheries whether in the inland waters of Canada or elsewhere. The original Act, however, having been left to its operation, no public interest would be subserved by dealing otherwise with this Act.

Cap. 30.—An Act to amend the law respecting district magistrates.

This Act has already been reported upon.

Cap. 41.—An Act to amend the laws respecting land surveyors and the survey of lands.

Sections 11 and 12 are substituted sections for articles 4123 and 4127 of the Revised Statutes of the province of Quebec, and such sections, as well as the articles repealed by them, prescribe conditions necessary to be fulfilled before any one can act as a land surveyor in the province of Quebec, and they attach penalties to any one acting as a land surveyor, who has not conformed to such conditions. So far

\* See Atty. Genl. of Canada vs. Atty. Genl. of Ontario, 20 Ont., Repts. 222, 19 Ont., App. Repts 31, 23 Sup. Ct. Repts (Can.) 458.



as these provisions are inconsistent with those clauses of the Dominion Lands Act providing for the appointment and qualifications of Dominion Land Surveyors they are *ultra vires* of a provincial legislature. They may, however, be construed as applicable only to persons surveying lands, other than Dominion Crown lands in the province of Quebec, and as not being intended to prevent Dominion Land Surveyors from exercising their functions in relation to Dominion lands in that province. In that view, and considering also that the Revised Statutes of Quebec have been left to their operation, it is not, in the view of the undersigned, desirable that this Act should be disallowed and he recommends accordingly.

Cap. 76. An Act to incorporate the Bel-Air Jockey Club.

This is an Act incorporating the persons therein named, under the name of The Bel-Air Jockey Club, for the purpose of improving the breed of horses and cattle in the province of Quebec, of acquiring and maintaining grounds and premises for the exhibition and trial of horses and cattle, and of holding contests, race meetings and other exhibitions of horses and cattle in the province of Quebec.

Sections 10 and 11 are as follows :

"Any person who shall wilfully destroy the property of exhibitors, or of any lessee, or of the corporation, or who shall hinder or obstruct the officers or police in the performance of their duties, or who shall wrongfully or maliciously gain admission to the grounds contrary to the rules of the corporation, or who shall be guilty of any disorderly conduct in or around the said grounds, or who shall disobey or violate such rules and regulations as may have been lawfully made by the corporation under this Act, shall be subject and liable to a fine of not less than one, or more than ten dollars, or imprisonment not exceeding thirty days, at the discretion of the court, before which the offender may be tried."

"All fines and penalties may be recovered, and prosecutions for the same may be brought before two justices of the peace in the judicial district in which the said grounds of the said Jockey Club are situated, or before any magistrate, judge of the sessions, or other officer having the powers of two justices of the peace."

"All fines imposed and collected under this Act shall be paid to the Provincial Treasurer."

This legislation in the view of the undersigned, unquestionably relates to the criminal law. The first offence specified, namely, the wilful destruction of property, upon or around the grounds of the corporation would be a criminal offence by chapter 168 of the Revised Statutes of Canada, (see sections 43, 44 and 45) and the obstruction of police in the performance of their duties in a misdemeanour under cap. 162 of the Revised Statutes of Canada, (see sec. 34).

It is clear that the fines imposed for offences of this character should be paid, not to the Provincial Treasurer, but to the Receiver General of Canada, under the provisions of chapter 180 of the Revised Statutes of Canada.

The undersigned is of opinion that the sections in question may have been allowed to pass inadvertently, and he recommends that the attention of the government of the province of Quebec be called thereto, with a view of the repeal thereof at the next session of the legislature.

The following Acts, in sections mentioned, contain provisions in regard to promissory notes and bills of exchange, which may be invalid. The undersigned, however, recommends that such Acts be left to their operation, in view of the provisions made by the Act of the Parliament of Canada passed in the session of 1890, relating to bills of exchange and promissory notes, which permit notes, and bills to be made by corporations under certain restrictions.

Chapter 77. An Act to incorporate the St. Lawrence Improvement Company. Section 17.

Chapter 89. An Act to incorporate "The Lotbiniere and Megantic Railway Company."

Chapter 90. An Act to incorporate the Lake St. Francis Railway and Navigation Company.



Chapter 91. An Act to incorporate "The Peninsula and Gaspé Short Line Railway Company."

Chapter 92. An Act to incorporate "The Eastern Railway Company."

Chapter 93. An Act to incorporate "The Matane Railway Company."

Chapter 79. An Act to revise and consolidate the charter of the city of Montreal, and the several Acts amending the same.

This Act is a revision and consolidation of all provincial Acts heretofore passed in reference to the city of Montreal, many of its provisions being taken from legislation, passed before the division of the legislative power between the federal and provincial legislatures, made by the British North America Act. As to those enactments, relating to the city, passed before confederation, the control over which is now in the Parliament of Canada, such will remain in force, excepting where affected by the legislation of Parliament, notwithstanding their attempted repeal or amendment by the provincial legislature. Some of the provisions of this statute in relation to taxation involve important questions as to the powers of the legislature. The powers given to the council, to make by-laws, also, in some instances, include matters over which the Parliament of Canada has control and has adopted legislation.

The provisions in relation to the Recorder's Court and to the appointment of the recorder and his qualifications, may also be open to some question, in view of the federal authority with respect to the appointment of judges and their qualifications.

The provisions of the statute in respect to fines, and remission of fines, may likewise be doubted, but as most of this legislation is substantially a re-enactment of pre-confederation enactments, and as all the questions involved can be conveniently raised in the courts by those having an interest therein, the undersigned is of opinion that the Act may properly be left to its operation, and he recommends accordingly.

Cap. 80. An Act to incorporate the city of Sorel.

The observations which the undersigned has made in reference to the charter of the city of Montreal are equally applicable to this Act.

Attention must also be called to the sections which authorize the laying out, opening up and keeping in order of ice roads, crossing the St. Lawrence to the north shore, and the river Richelieu to the west bank, also to those which relate to the taking of ice from those rivers, and to the establishment of ferries on those rivers. These provisions may be open to objection as an interference with the rights of Parliament of Canada to legislate in respect to navigable rivers, and with the proprietary rights of the Dominion of Canada in relation to these rivers.

The undersigned recommends that this Act be also left to its operation. The questions involved may be raised in due course by those concerned, or if they be of sufficient importance, be raised by your Excellency's government for the purpose of having the rights of the federal and provincial authorities respectively determined.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## QUEBEC, 53 VICTORIA, 1890.

4TH SESSION, 6TH LEGISLATURE.

GOVERNMENT HOUSE, QUEBEC, 30th April, 1890.

*The Lieutenant-Governor of Quebec to the Secretary of State.*

SIR,—I have the honour to report to his Excellency the Governor General in Council that I have reserved, for the signification of his Excellency's pleasure, a bill entitled: "An Act to legalize the marriage and contract of marriage of Aimé Bourassa and Dame Purissima Robert."

This is a case of a widow marrying her deceased husband's brother. The bill contains two clauses—the first one declaring the civil legality of the marriage, and the second one declaring the marriage settlements legal.

My reason for reserving this bill was that I considered the first clause an infringement upon the legislative power exclusively assigned to the Dominion Parliament by section 91, subsection 26—"marriage and divorce" of the British North America Act, 1867.

I will feel much obliged by being acquainted with the action of the honourable the Privy Council in this matter for my future guidance.

I am, &c.,

A. R. ANGERS,  
*Lieutenant-Governor.*

REPORT of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 21st April, 1891.

DEPARTMENT OF JUSTICE, OTTAWA, 14th March, 1891.

*To His Excellency the Governor General in Council:*

The undersigned having considered the Acts passed by the legislature of the province of Quebec in the session held in the year 1890 (January-April), the chapters of which are given in the annexed schedule, respectfully recommends that they be left to their operation, and that the Lieutenant-Governor of that province be informed thereof. (Received by the Secretary of State, 2nd May, 1890.)

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Schedule.*  
Chapters 1 to 69, 80 to 124.

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*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on 21st April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, March 21st, 1891.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts passed by the legislature of the province of Quebec in the session held in the year 1890 (January and April), which were received by the Honourable the Secretary of State on the 2nd May, 1890, as follows :—

Chapter 70. An Act to incorporate the city of St. Cunegonde, of Montreal.

Chapter 71. An Act to consolidate the Acts respecting the corporation of the town of St. Johns.

Chapter 72. An Act to amend and consolidate the Acts of Incorporation of the town of Terrebonne.

Chapter 73. An Act to incorporate the town of Acton.

Chapter 74. An Act to incorporate the town of Buckingham.

Chapter 75. An Act to incorporate the town of Cote St. Louis.

Chapter 76. An Act to incorporate the town of Cote St. Antoine.

Chapter 77. An Act to incorporate the town of Bedford.

Chapter 78. An Act to incorporate the town of Victoriaville, and to erect the municipality of the parish of St. Victoire d'Arthabasca.

Chapter 79. An Act to incorporate the town of Magog and for the better management of education within its limits.

These Acts are all of the same purport, and consolidate and amend all existing legislation, having particular reference to the corporations therein referred to, and in recommending that they be left to their operation the undersigned, notwithstanding, feels it necessary to question the large powers of enacting by-laws, vested in the council of these corporations, by the legislature.

The undersigned has in previous reports frequently called attention to such Acts of incorporation, infringing more or less upon the subjects exclusively assigned to the Federal Parliament. All of these Acts contain provisions which are objectionable in that regard, but the Acts may properly be left to their operation, leaving all such matters to be determined by legal tribunals.

Respectfully submitted.

JNO. S. D. THOMPSON,

*Minister of Justice.*



## QUEBEC, 54TH VICTORIA, 1890.

(1ST SESSION, 7TH LEGISLATURE.)

*The Lieutenant-Governor of Québec to the Secretary of State.*

GOVERNMENT HOUSE, QUEBEC, 13th January, 1891.

SIR,—I have the honour to report to his Excellency the Governor General in Council, that I have again reserved, this session, for the signification of his Excellency's pleasure, a bill entitled: "An Act to render the marriage contracted between Frederick Pratt and Marie-Albina Thibault, civilly valid."

Again this is a case of a widow marrying her deceased husband's brother.

My reasons for reserving this bill, in the absence of any signification of his Excellency's pleasure about the bill of the same nature, reserved last session, are not only taken on the same grounds, viz.: an infringement upon the legislative power exclusively assigned to the Dominion Parliament by section 91, subsection 26 (marriage and divorce) of the B. N. A. Act 1867, but also on the ground that this marriage was contracted in the United States, State of New York.

Accepting this bill might be taken as a precedent for the legislature of Quebec to validate marriages contracted all over the world, in violation of our and British laws.

I have, etc.,

A. R. ANGERS,  
*Lieutenant-Governor.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 21st September, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th March, 1891.

*To His Excellency the Governor General in Council.*

The undersigned has had referred to him a petition from the Baie des Chaleurs Railway Company, praying that your Excellency might be pleased to disallow an Act passed by the legislature of Quebec at its last session intituled "An Act to amend the law respecting railways in the province."

The undersigned has also had the said Act referred to him for report.

The portion of the said Act which is called in question by the petition is in the following terms:

"5183. A. It shall be lawful for the Lieutenant-Governor in Council at any time, upon the report of the Railway Committee of the Executive Council, to cancel the charter of any railway company incorporated under the laws of this province, when the said company has not complied with the terms of its charter as to the commencement and completion of its works within the prescribed time, or when the said company has become insolvent or when the company does not or is not able to proceed with the work, or for any other cause which in the opinion of the Lieutenant-Governor in Council is sufficient to justify such cancellation."

The company by their petition allege in effect:

(a.) That they were incorporated by the Act of the legislature of the province of Quebec, 36 Vic., cap. 43.

(b.) That the company by its charter is authorized to build a railway from a point on the Intercolonial Railway to New Carlisle and the Bay of Paspébiac, with the right to extend the same to Gaspé Basin.

(c.) That the company had built part of its railway.

(d.) That the company had been subsidized by the Parliament of Canada, and

(e.) That the road of the company connects with the Intercolonial Railway, and has been declared by the Parliament of Canada to be a work for the general advantage of Canada, and is thus subject to the legislative authority of the Parliament of Canada. And the petitioners pray "for the disallowance of the Act for, amongst other reasons, the following :—"

"Because the said law interfering with companies subsidized by the Federal Parliament, and with companies whose railways have been declared to be a work for the general advantage of Canada, and subject to the legislative authority of the Federal Parliament applying to companies in existence at the time of its sanction, interfering with vested rights, affecting the credit of railway companies, is against the general advantage of the Dominion of Canada, and affects its interests generally."

The undersigned has the honour to observe, that in his view, the Act in question is not *ultra vires* of a provincial legislature. It may be objectionable, as it transfers to the Railway Committee of the Executive Council of the provinces powers, functions and responsibilities which are generally reposed by legislation in legal tribunals, and does not establish the safeguards which legal procedure possesses, but it seems clear that a legislature may invest other bodies than the courts with such powers and functions without exceeding its jurisdiction. As to the objection that proper procedure has not been provided for the investigation of a company's acts or omissions, your Excellency can hardly presume that the Railway Committee of the Executive Council will fail to regard the principles which would guide a judicial tribunal in exercising the important functions which are conferred upon it by this statute.

The Act in question does not deal with any specific company, and relates to companies incorporated by the provincial legislature.

There may be a question as to whether the railway of the petitioners comes within the purview of the Act, inasmuch as it is alleged that such railway was, at the time of the passing of the Act, subject only to the legislative authority of the Parliament of Canada, by reason of the declaration of that Parliament, that it is a work for the general advantage of Canada. On that point it seems unnecessary for the Minister of Justice to express an opinion, as the petitioners can speedily obtain a determination of it by the courts.

The undersigned is therefore unable to recommend the disallowance of the said Act as prayed for.

Respectfully submitted.

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 12th January, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th January, 1892.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Acts of the legislature of the province of Quebec passed in the session of 1890 (Nov.-Dec.) the chapters of which are given in the annexed schedule, respectfully recommends that they be left to their operation, and that the Lieutenant-Governor of that province be so informed.

Chapters 15 and 22, which are not included in this schedule, will be made the subject of a separate report.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Schedule.*

Chapter 1 to 14, 16 to 21, 23 to 103.

*Deputy Minister of Justice to the Honourable the Attorney General of Quebec.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th July, 1891.

SIR,—I am directed by the Minister of Justice to send for your information copy of a petition addressed to his Excellency the Governor General, having reference to an Act passed by your legislature at its last session entitled :

Chap. 15. "An Act to amend and consolidate the Mining Law."

The Minister of Justice would be glad to give all possible consideration to any observations which you may think proper to make respecting the petition.

I have, &c.,

ROBT. SEDGEWICK,

*Deputy Minister of Justice.*

*Petition to His Excellency the Governor General from proprietors of Mining Lands and persons interested in Mines in Province of Quebec, praying for disallowance of Quebec Mining Law. (54 Vic., 1890), Chap. 15.*

*To His Excellency, the Right Honourable Sir Frederick Arthur Stanley, &c., &c., Governor General of the Dominion of Canada, in Council :*

The petition of the undersigned, proprietors of mining lands and persons interested in mines in the province of Quebec, represents ;

That there was passed at the last session of the legislature of the province of Quebec an Act, chap. 15 intituled : "An Act to amend and consolidate the Mining Law."

That your petitioners respectfully allege that the said Act is unconstitutional, that it has a retroactive effect, that it interferences with private rights unjustly, and confiscates private property, that it is contrary to the policy of the Dominion, and is injurious to a large and increasing commercial industry.

Your petitioners submit to your Excellency in Council the following grounds on which they ask for the disallowance of the said Act.

1. Subsection two of clause one repeals the existing law contained in article 1425 of the Revised Statutes of Quebec, and enacts :—"As it is admitted that Mines whether upon public or private lands belong to the crown, any person discovering a mine may purchase the same by complying with the provisions of the section." Your petitioners represent that it is not a fact that it was ever admitted that minerals other than gold and silver, on conceded lands belonged to the crown, but that on the contrary the whole course of legislation and jurisprudence in the province of Quebec as well as the system of administration by the Crown Lands Department of the province admitted the contrary to be the case.

2. The Statute complained of proceeds to provide from sections 1455 to 1512 for a system of confiscation of the minerals on private lands—any person desirous of acquiring the minerals on the land of another obtains from the government a permit of exploration, and after satisfying himself of the quantity of land which he will require, a surveyor's plan with an offer of price is deposited with the commissioner, and unless the proprietor elects to pay the price offered, the property in the minerals passes to the holder of the exploration permit.

3. The statute law of the province of Quebec as it stood previous to the passing of the Act in question is to be found in the Revised Statutes from article 1421 to article 1532 inclusive, which articles are taken from the Act of 1880, chapter 12.

4. Previous to the passing of this Act the Department of Crown Lands had made regulations for the sale of the Crown lands containing mineral deposits, by which the price of such lands was increased as compared with lands sold for agricultural purposes.



5. Article 1423 provides:—"It shall not be necessary in any letters patent for lands granted for agricultural purposes, to mention the reserve of mining rights, which reserve is always supposed to exist under the provisions of this section." 43-44 Vic., c. 12, s. 3.

6. Articles 1425, 1428 and 1429 enact: "Any person who previous to the 24th July, 1880, obtained letters patent for agricultural purposes, but with reservation by the government of the mining rights, any lot whatever forming part of the public lands of this province may, if he or his legal representatives discover and wish to work a mine, purchase the mining rights so reserved by the government, by paying in cash to the commissioner, over and above the price already paid for said lot, a sufficient additional amount to make up the sum of two dollars per acre, if for gold and silver, and one dollar per acre if for copper, iron, lead or other baser metals." 43-44 Vic., c. 12, s. 4.

Article 1428: "If on any lot of land granted by letters patent since the 9th March, one thousand eight hundred and seventy eight, or which shall hereafter be granted, on the usual terms and conditions for agricultural purposes, a mine of phosphate of lime has been found to exist, any purchaser of such lot, or his legal representative shall, if he wish to work such mine, pay in cash to the commissioner a sufficient additional amount to make up the sum of two dollars per acre." 43-44 Vic., c. 12, s. 7.

Article 1429: "Every person who may acquire by letters patent, on the usual terms and conditions for agricultural purposes, any lot whatever, upon which he may discover a mine of baser metals, excepting phosphate of lime, shall, if he or his legal representative wish to work the same, pay to the commissioner a sufficient additional amount to make up the sum of one dollar per acre." 43-44 Vic., c. 12, s. 8.

7. The law of 1880 thus carefully leaves the titles of those who held lands under agricultural grants without reservation of minerals untouched, and grants to those in whose grants the minerals had been reserved, as well as to those who had obtained grants since 1880, the right to purchase those on paying the difference between the agricultural and mineral prices.

8. The statute now complained of takes from those whose grants were made previous to 1880, the right of ownership in the mines which had not been reserved by the Crown, and which were their undoubted property, and deprives those who had purchased agricultural lots since 1880, and lands on which phosphates are found, granted since 1878, of the right guaranteed to them by these laws, of becoming owners of the minerals by purchasing the difference in price.

9. The clause 1426 of the Act complained of, imposes on all mineral properties a tax (therein styled a royalty) "of three per cent of the merchantable value of the product of all mines and minerals.

10. The imposition of this tax will be most injurious to the mining interests, and in some cases will entirely prevent the carrying on of mines, in those cases where the margin of profit is small, which your petitioners undertake to prove to your Excellency in Council.

11. This action of the provincial legislature is contrary to the general policy of the Dominion, as your petitioners believe, the Parliament of Canada having at its session of 1890, granted encouragement to your petitioners by removing the duty on machinery imported for the use of mining operations, which policy is overturned by the imposition of such a tax.

12. That the said Act is *ultra vires* and unconstitutional.

Wherefore your petitioners humbly pray that your Excellency will be pleased to exercise the power conferred on you by the British North America Act, and disallow the said bill.

And as in duty bound your petitioners will ever pray.

A. Morrison, President, Brompton Lake Asbestos Company; W. H. Kennedy, E. Webb, E. J. Hale, A. W. Cook, John Y. Welch, John McCaw, B. T. A. Bell, Sect, General Mining Association of the province Quebec, and 160 others.

QUEBEC, 30th June, 1891.

*Attorney General's Department, Quebec, to the Honourable the Minister of Justice.*

DEPARTMENT OF ATTORNEY GENERAL, QUEBEC, 12th August, 1891.

SIR,—I am directed by the Honourable the Attorney General to send you, for your consideration, a memorandum having reference to a petition addressed to his Excellency the Governor General, relating to an Act passed by the legislature of Quebec, entitled : “An Act to amend and consolidate the mining law.”

CHARLES LANCTOT,

*Law Officer.*

*Report of the Honourable the Attorney General of Quebec.*

DEPARTMENT OF ATTORNEY GENERAL, QUEBEC, 13th August, 1891.

*To His Excellency the Right Honourable Sir Frederick Arthur Stanley, &c., &c., &c., Governor General of the Dominion of Canada, in Council :*

The Attorney General of the province of Quebec, in answer to the petition of A. Morrison and others, proprietors on mining lands, and persons interested in mines in the province of Quebec, praying that your Excellency will be pleased to disallow the Act passed by the legislature of the province of Quebec, at the session of 1890, 54 Vic., ch. 15, entitled : “The Quebec Mining Law,” humbly represents :

The petitioners, in support of the said petition, allege several reasons, which may be briefly stated as follows :—

1st. The Quebec Mining Law 1890, interferes with private rights unjustly and confiscates private property, first by repealing article 1425 of the Revised Statutes of the province of Quebec, and replacing it by subsection 2 of section 1 of the said Act, which takes away from persons who have obtained from the Crown, previous to the 1st of July, 1890, lots of land for agricultural purposes without reservation, by the government, of the ownership of mines existing on their lands, which mines, according to the common law of the province, formed part of the land of said landed proprietors.

2nd. By taking away from the purchasers of public lands patented since 1880, and of public lands upon which phosphate mines have been discovered, patented since the 7th of March, 1878, the right of acquiring mines existing on their lands, on the condition mentioned in articles 1428 and 1429 R. S., P.Q., that is to say, by paying to the commissioner of Crown Lands the difference between the price of agricultural lands and that of mines.

3rd. The law, which they ask to be disallowed, is contrary to the general interests of Canada and to the trade policy of the Dominion, inasmuch as it imposes a tax or duty on an important industry.

4th. This law is ultra vires and unconstitutional.

The Attorney General of the province of Quebec contends that these objections are unfounded, and cannot justify the disallowance of the said Act.

## 1.

The pretension that the repeal of article 1425, of the Revised Statutes of the province of Quebec takes away from the owners of the surface, whose titles are anterior to the 24th July, 1880, the ownership of mines situated on their lands, is totally erroneous, inasmuch as these persons never were owners of the mineral estates (*trefonds mineral*) which might be found under the surface of their lands, as the ownership of mines never was, in the province of Quebec an accessory of the ownership of the surface. According to the old French law, mines constituted a property distinct from the soil which covered them, and this property belonged to the Crown and did not become private property except by an express act of the Sovereign.

(Louis XI, Avril, 1483, (*Recueil des anciennes lois Françaises*, vol. 10, p. 911)—(*Id.* tome XI, p. 97)—(*Id.* tome XI, p. 666)—(*Id.* tome XII, p. 771)—(*Id.* tome XII, p. 196.)

Henry II., Septembre, 1548,—(*Idem*, tome XIII, p. 57)—(*Idem*, tome XII, p. 290.) François II., en 1560—(*Idem*, tome XIV, p. 41).

En 1677, 1700 et 1704,—(*Idem*, tome XIX, p. 175, et tome XX, pp. 428 et 443.) Louis XV., 1705.—(*Idem* tome, XX, p. 467).

Louis XV., 1716—(*Idem*, tome XXI, p. 79). Louis XV, 1744—(*Idem*, tome XXII, p. 166).

Ordonnances du 30 Mai, 1413, du 3 Novembre, 1416, du 1er Juillet, 1437, du 21 Mai, 1455, de Décembre, 1461, du 10 Mai, 1463, du 19 Août, 1467, de Septembre, 1471, d'Août, 1483, de Novembre, 1483, de Février, 1483, de Janvier, 1488, de Juin, 1498, de Février, 1506, et de Juillet, 1514.

Edits et Ordonnances, (vol. 1er, p. 5.) (vol. 1er, p. 45.) Edit, Juillet, 1705. Edit, 17 Oct., 1520.

Choppin, (t. 11 du *Domaine de la Couronne*, titre 11, ch. 6, p. 14). Bosquet, (*Dictionnaire des droits domaniaux*, vbo. *Domaine de la Couronne*.) (vbo. *Mines et Minières*). Guyot (*Répertoire*, vbo. *Mines*). Merlin (*Rep.* vbo. *Mines*, ch. IV). Ferrière (2 vol. *Grand commentaire de la Coutume de Paris*, art. 187, ch. 10). Code Civil B. C,—art. 414. Dalloz—(*Propriété des mines*, t. 1er, p. 34) et pp. 266, 306, 374, 413, 452, 455, 401, 612. Loche,—(*Législation de la France ou Commentaire des Codes Français*, t. 9, p. 107). Dalloz, aîné,—*Répertoire de la législation* (tome 31) vbo. *Mines et Minières*). Loche,—(*Législation des mines*, p. 379 et p. 399).

The right of ownership in mines, which belonged to the Kings of France, passed at the cession, to the British Crown. Such was the holding of the Court of Queen's Bench in a judgment rendered on the 7th of December, 1883, in the case of *Regina vs. de Léry et al.* The judgment of the Superior Court is reported in 9 *Law Reports*, p. 225 and that of the Court of Queen's Bench in 6 *Legal News*, p. 402. The heading of the Report reads as follows:—"By the old law of France, which is in force in Canada, the right to the minerals did not pass by a grant of lands to the grantee, without special words, but remained in the Sovereign. The King of England, at the cession, succeeded to this right. The Sovereign could grant the right to minerals to whomsoever he pleased, and, in such case, the owners of the soil had no right except to an indemnity for any damages they might suffer by the mining operations."

The British North America Act, sec. 9, and the Civil Code of Lower Canada re-enact, on this subject, the principles of the old law. Article 414 of our Civil Code lays down the general principle that "ownership of the soil carries with it ownership of what is above and what is below it." But, at the same time, the third paragraph of this article makes an important restriction to the application of the above principle in the following terms. The proprietor may make upon the soil any plantations or buildings he thinks proper. He may make below it any buildings or excavations he thinks proper, and draw from such excavations any products they may yield, saving the modifications resulting from the laws and regulations relating to mines and the laws and regulations of police"; that is to say, if allowed to give more precision to the reference which is here made by the legislator



to certain special regulations, saving the application of the old French ordinances and of the principles of the French law, which declare that mines belong to the Crown.

The above is sufficient to show the falsity of the pretension of the petitioners that mines situated on lands patented previous to 1880, without reservation by the government of the rights of the mines, belong to the surface owners.

Consequently, it cannot be said that the Mining Act of 1890 deprived them of a right of ownership, which they never possessed.

2nd. The petitioners also pretend that the repeal of articles 1428 and 1420 R. S. P. Q., which allow purchasers of lands mentioned in these articles to buy the mines situated on said lands, by paying to the Crown the difference between the price of agricultural lands and the price of mines, constitutes a confiscation of private property. This pretension is as unfounded as the previous one.

The mineral estate (tréfonds minéral) belonging to the Sovereign, the legislature, in the Mining Act of 1880, indicated the mode of acquiring such mines and causing them to become the property of the owners of the surface. All of these owners, who thought proper to take advantage of this clause of the law, became absolute owners of the mines on their lands, and the Act of 1890 does not in any way affect them. On the other hand, such surface owners, who did not take advantage of this exceptional privilege granted them by the law of 1880, did not become owners of the mines which might be situated on their lands, and the legislature, by changing the mode of acquiring such mines, did not confiscate anything belonging to them. Parliament is no more bound than a private individual, to give perpetual existence to an offer which has not been accepted during a certain number of years.

It is also worthy of remark that the Mining Act of 1890, when fixing, in articles 1463 and following, the price of mines, only exercised the powers which belong to the Lieutenant-Governor in Council, under the article 1434 R. S. P. Q., and that, under the previous law, the owners of the surface mentioned in said articles 1428 and 1429, could have been forced, in order to become proprietors of the mines on their lands, to pay a much larger sum than the price required by the law of 1890.

Another objection to be disposed of, under the head of, first, the assertion by the petitioners that articles 1455-1512 inclusively, of the Mining Act of 1890, interfere with private rights and despoil private individuals of their property. This is utterly false. These articles despoil nobody and deprive no man of his property, since they are dealing exclusively with mines which have not yet become private properties.

Moreover, the mode of exploration of the soil and of working mines, laid down by these articles, existed in the statute of 1880 and in articles 1439 and following R. S. P. Q.

## II.

The petitioners bitterly complain of the imposition of a tax or royalty of 3 per cent on the mercantile value of the products of all mines and minerals enumerated in section 1426, and declare such tax unconstitutional and *ultra vires*.

The imposition of a tax or royalty on the products of mines cannot be a cause of disavowal of the law which imposes such tax, as the power of imposing a tax of this nature is of the competence and within the jurisdiction of the Quebec legislature, which alone should judge of the opportunity of imposing it, and it is not because such a tax, at a certain standpoint, affects the commerce of the country that the law which decrees it should be disallowed.

Disavowal for this cause would render necessary the disavowal of almost all the laws under which provincial taxes are imposed. Liquor licenses, timber licenses, auctioneer licenses, the law imposing a direct tax on commercial corporations and many other of our local statutes doubtless have a certain restrictive effect on trade and commerce. However, nobody dreamt up to this of asking the disavowal of these laws on such ground.

It must also be remarked that the Mining Act of 1890 makes no innovation when it imposes this tax or royalty. The old French law gave the King the right to levy a royalty of ten per cent on the products of the mines.

Regina vs. Delery et al., 9 Legal News. Law Reports, p. 125 and following.

And article 435 R. S. P. Q., which re-enacted the Mining Act of 1880, gave the Lieutenant-Governor in Council the power to claim at any time the royalty due to the Crown upon any land already sold, conceded or otherwise alienated, or which might be hereafter sold.

### III.

The last argument of the petitioners for disavowal is that the Mining Act of 1890 is *ultra vires* and unconstitutional. In what manner this act is *ultra vires* of the Quebec legislature and unconstitutional, the petitioners do not see fit to state.

However, nothing can be more self-evident than the constitutionality of this law. The British North America Act specifically gives to the provinces the ownership of mines and section 92 of the same act gives the legislature of the provinces exclusive power to make laws concerning them.

To sum up the question to your Excellency, the undersigned humbly submits that the Quebec Mining Law, 54 Vict. chap. 15, which was duly assented to on the 30th December, 1890, is constitutional, has not a retroactive effect, does not interfere with private rights unjustly nor confiscate private property, nor is it contrary to the policy of the Dominion or injurious to a large and increasing industry, but that it merely affirms the principles which were always admitted to the province of Quebec, imposes a tax or royalty evidently within the powers of the legislature, and in no way violates the constitution.

Wherefore, the undersigned humbly prays that the petition of A. Morrison and others, praying for the disavowal of the Quebec Mining Law, 54 Vict. chap. 15, be dismissed.

J. E. ROBIDOUX,

*Attorney General.*

QUEBEC, 31st July, 1891.

*Hon. Geo. Irvine to Deputy Minister of Justice.*

QUEBEC, 1st, December, 1891.

DEAR SIR,—I duly received your telegram asking me to send, by first mail, the stenographer's notes of the interview we had with you in the early part of the summer, respecting the disallowance of the Mining bill of the province of Quebec. I return them to you herewith.

I find a fairly good report of what took place in the "Mining Review," and I send you herewith a copy. There is only one point which is omitted in this report. I referred to the decision of the Seigniorial Court, composed of all the judges of the province of Quebec, which sat in 1855, and is found in a special number of the Lower Canada Reports, and in which the particular point respecting the question of whether minerals were reserved in grants where there was no express reserve came up, and was decided adversely to the opinion now held by the Quebec government. The judgment of this court is binding on the government the seigniors and censitaires, and therefore is practically binding on the public generally, and justifies our contention that the jurisprudence of the country, which was confirmed by the legislature of 1880, favoured the pretension that, where there was no special reserve the property in the baser metals passed to the grantee with the grant from the Crown.

I would be much obliged to you if you would let me know if you want any further information from me, or even if you think it desirable I should go to Ottawa to see you, as I consider it very important that I should do all in my power to properly represent the views of the miners in this matter.

I remain, yours truly,

GEO. IRVINE.



*Extract from "Mining Review" of Interview of Deputation with Deputy Minister of Justice.*

The petition prepared by the General Mining Association of the province of Quebec, having been presented to the Privy Council, and a hearing being granted by the Hon. Sir John Thompson, Minister of Justice, the following deputation attended at Ottawa on the morning of Friday, 17th July, 1891: A. Desjardins, M.P., Montreal; W. B. Ives, Q. C., M.P., Sherbrooke; Hon. George Irvine, Q.C., Quebec, president of the Association; C. Magee, Managing Director Bristol Iron Co., Ottawa; J. Lainson-Wills, Manager General Phosphate Corporation; Cap. Robt. C. Adams, Managing Director Anglo-Canadian Phosphate Co., Montreal; Hector McRae, Ottawa, and B. T. A. Bell, Secretary General Mining Association. The members were received by Mr. Robt. Sedgewick, Q.C., Deputy of the Minister of Justice.

Hon. GEO. IRVINE, Q.C., said: There are three grounds upon which we seek to have this Act disallowed. 1st. We claim that it is an unreasonable law because it deprives people of their vested rights in property for which they hold a title from the Crown itself. 2nd. That it is contrary to the general interests of the Dominion and to the policy of the Dominion government. I presume that that would be a principle governing the disallowance of the Act, because it would produce chaos if the provinces were allowed to adopt Acts which nullify the policy of the Dominion Parliament and government. 3rd. Because it tends to so impede, and in many cases to put a stop to the exercise of an industry which is of great importance to the whole Dominion. Now with reference to the claim that it takes away private property, that is most easy to understand and the simplest. In 1880, an Act was passed regulating Crown Lands generally, and having a particular reference to mining. Prior to the passing of that Act, it had been universally admitted and judicially decided, and the whole course of the jurisprudence of the country, as well as the management of the Crown Lands Department, and the regulations made by them, went to establish that where lands were granted without a reserve of minerals, all the baser metals—except gold and silver—became the property of the lessee. There is no doubt about that. (Mr. Irvine here cited several important legal decisions in support of his contention.)

MR. SEDGEWICK—If a seignior owns lands in the province of Quebec he may convey his interest and reserve the mines.

Hon. MR. IRVINE—No; they cannot do that.

MR. SEDGEWICK—Well, they can do it here, and in all the other provinces.

Hon. MR. IRVINE—You have no seigniorial tenants in the other provinces.

MR. SEDGEWICK—But if you own a piece of property in the province of Quebec, can you not reserve for yourself—an easement we would call it—for the purpose of having something off it?

Hon. MR. IRVINE—The holding of the seigniority under the Feudal Rights is different from the holding of lands under the Crown. The former were made with a view to settling the country, copying the old style which then existed in France, and they were bound, whenever an application was made by a settler, to make a grant to him, subject to an annual rent. One of the questions put by the Crown to the court in one of the cases referred to was, whether, if a seignior reserves the baser metals in making a grant, would that reserve be legal. The court held that it would not; that the property of the baser metals would go to the tenant censitaire.

MR. SEDGEWICK—That was in consequence of the original grant under the Feudal law to the seignior.

Hon. MR. IRVINE—I refer to that for the purpose of showing that a long time back the jurisprudence of the country held that the property in the baser metals, where they were not reserved, went to the owner of the soil.

MR. SEDGEWICK—I suppose you are giving that particularly because the Act alleges that all the mines in the province belong to the Crown. Is there any authority with respect to that argument in the Act?



Hon. Mr. IRVINE—Not in the slightest. In the case of the Queen v. DeLéry, the question was the ownership of gold. In the original grant to DeLéry there was no reservation of the precious metal, and it was argued that gold was included in the grant to the seignior and that it followed that it went to the censitaires when the land was conceded to them. Later on, the DeLéry family, who were the seigniors of that property, made application to the Crown for a grant of gold, and letters-patent were made out and they have held possession of the gold deposits ever since, under that title.

Mr. SEDGEWICK—Was this in Lower Canada?

Hon. Mr. IRVINE—Yes, in the district of Beauce. There is gold there, they are working at it now, and at one time there was a fairly large development. In that case (the DeLéry) it was held that the ownership of the gold did not pass to the seignior, therefore it did not pass to the censitaire.

Mr. SEDGEWICK—But the Court of Appeals held that that did not apply to the baser metals that belong to the land. I do not think there can be any doubt but that everything does pass, unless expressly reserved.

Hon. Mr. IRVINE—The Act of 1880, provided, "That all grants which were made subsequent to the passing of the Act shall not be necessary to make a reserve of minerals when they were held to be reserved, that being so stated." Well, that of course was perfectly legitimate legislation, because it did not affect any vested rights, and anybody taking a grant, took it subject to that legislation. But there was an important provision in that Act, i.e., that if a man took a grant from the Crown under ordinary circumstances, that is for agricultural purposes, in which, under the Act, the mines shall be reserved—if such a person afterwards discovered minerals on the lot, he would have the right to obtain title to them by paying the difference between the agricultural price and the mineral price.

Mr. SEDGEWICK—Did the province fix the price?

Hon. Mr. IRVINE—It fixed the price of the mineral lands, but the agricultural price varies. So that you understand every one who obtained a grant of land previously was owner of the minerals under the general principle, but that every one who obtained land after 1880 were not owners; but they had the right to purchase at the price fixed by the province. They would have the right when they discovered minerals upon it, to purchase the land by paying the taxed price. This was done in a property in which I am interested. This old Act was not objectionable for it interfered with no vested rights which came into existence after 1880. You will see, therefore that there are several classes of persons to be considered. Those who hold land under old grants; the holders of land under old titles, in which titles the lands have not been reserved to the Crown—

Mr. SEDGEWICK—I would like you to give me some evidence. You might, for instance, give evidence that you hold some lands under titles in which there is no reservation of that kind.

Hon. Mr. IRVINE—I can cite you a case of one of the best asbestos mines in the townships, where the owners hold, and their predecessors held, their lands since 1802. The original grant was made in 1802, and descended by a regular chain of titles from the King family. They owned it for some twenty years before minerals were discovered, and they are now in the condition of persons holding land under a title direct from the Crown, in which the minerals were not reserved.

Mr. MAGEE—I could cite another case where there is a very serious complication arising out of the operation of this new Act. Parties owning patented lands leased them to mining men at a certain rental per annum. These parties continued work for a number of years and the lands again pass into the third and fourth hands. I represent the Bristol Iron Co., and we are really the fourth purchasers—that is, we took an assignment of the original lease of the mining rights (a 99 year's lease), paying a rental. We erected machinery and plant and have considerably developed these mines, investing quite \$150,000. We then got an opportunity of leasing, not only giving an assignment to all our rights in the mines, but of leasing our plant and machinery for a royalty of so much per ton, so that these last people have really to pay three rents, that is, if the new Act is held to be constitutional.

Hon. Mr. IRVINE—That has a reference to the tax.

Mr. MAGEE—They pay a tax to the owner of the soil, the royalty to the owner of the mining rights, machinery and plant, and then they have to pay three per cent under this new Act, to the government, on the merchantable value of the quantity raised, before they can export their ores.

Hon. Mr. IRVINE—I should say that, although there is no difference otherwise, there is an exception in the case of phosphate lands, principally as regards the date from which the law of 1880 takes effect. There has been a change made with regard to these lands in 1878, so that as regards phosphates, 1878 is the date referred to instead of 1880, as in the case of the other minerals. In the interpretation clauses of this Act the definition of public and private lands is described as follows :—

“The words ‘public lands’ mean and designate all Crown lands or Ordinance lands transferred to the province, etc., which have not been alienated by the Crown.”

“The words ‘private lands’ designate all lands conceded otherwise alienated by the Crown, other than mining concessions or lands conceded by the Crown as such, or which shall hereafter be conceded.”

So that when private lands are used, it does not in any way affect lands granted as mining lands. Now clause 1425 says :—

“As it is admitted that mines, whether upon public or private lands, belong to the Crown, and any person discovering a mine may purchase the same, by complying with the provisions of this law.”

Now private lands mean all lands which are not conceded as mining lands, that is to say, an ordinary grant for agricultural purposes is called “private lands,” and the government now declare that all these lands belong to the Crown.

Mr. SEDGEWICK—Of course, you have to give that a limited meaning. That may mean all mines upon public or private lands belong to the Crown where the Crown has not already parted with the title.

Hon. Mr. IRVINE—They define “private lands” to mean all lands which are not granted with mining privileges. Then this clause goes on following up this provision. “Upon private lands, however, the occupant of the surface has the first right to purchase such mine, upon the conditions imposed by law and the regulations. Before coming to that, however, the next clause provides :—

“From the first day of May, 1891, a royalty shall be levied in favour of the Crown, upon every mine which is now, or may hereafter be sold, conceded or otherwise alienated. Such royalty shall, unless otherwise determined by letters-patent already granted, consist of a percentage of three per cent of the merchantable value of the products of all mines and minerals.”

Now, the meaning of that is that on all minerals taken from the province of Quebec, there is a royalty of three per cent, whether the lands were sold as mining lands or otherwise.

Mr. SEDGEWICK—Now, wherein do you say that this is unjust—any more unjust than a tax—say an income tax?

Hon. Mr. IRVINE—An income tax would not affect a particular industry.

Mr. SEDGEWICK—In what respect is it different from a license?

Hon. Mr. IRVINE—It is greatly different. You have to pay license fees besides this.

Mr. SEDGEWICK—I mean a license to carry on a business or profession. It is a general tax upon a particular industry, it is true, but does it differ in any moral sense from any particular tax which a province may impose, for instance, they say an insurance company shall pay a certain tax?

Hon. Mr. IRVINE—The Privy Council decided that these commercial taxes were constitutional. Therefore, the question as to the legality of the law relating to one particular industry in face of that decision has been settled.

Mr. SEDGEWICK—I agree with you that we ought to look askance at an Act which professes to interfere with vested rights—to take one's property without compensation, and give it to the state.



Hon. Mr. IRVINE—I only mention this fact now—that they use the word “royalty,” implying on the part of the person, the Crown or individual who levies that right by statute or otherwise, ownership in the property from which royalty is paid.

Mr. SEDGEWICK—It does not make any difference what they call it. You say the Act infringes upon private rights in some other way.

Hon. Mr. IRVINE—I say I have a right to assume that all rights upon private lands conceded previous to 1880 belong to the grantee, and that all granted since 1880 belong to the grantee, subjected to the payment of certain sums of money. I will show you how the carrying out of this Act infringes upon private rights. You will observe it says that the Crown may sell mines on private lands subject to certain regulations. Section 1455 says: “Every person, firm or company may explore and prospect for the discovery of mines and minerals upon public lands not already occupied as mining concessions or otherwise.”

And section 1461 says: “Any person may obtain from the commissioner the sale of one or more mining concessions upon the following conditions:—

1. Upon private lands, after the owners thereof have been placed *in mora* to take a sale thereof, if they refuse to avail themselves of such rights; the whole in conformity with this law.”

Mr. SEDGEWICK—Do you not think a limited construction must be given to that, and apply it only to those lands which contain a reservation of minerals.

Hon. Mr. IRVINE—Take the lands since 1880, they have been by law reserved and subject to the right to purchase them.

Mr. SEDGEWICK—Then may not that section only apply to those lands?

Hon. Mr. IRVINE—If that would be the construction the courts would give it; but I think it very doubtful. Now you see the effect of that legislation is that any person may go to the Crown and obtain a permit for exploration of private lands. He has the right to go on private lands and examine the lot, and he may take 50 acres of this lot, measure it out, go to the Commissioner of the Crown Lands and deposit the price which he considers this property is worth. There is a minimum price fixed by the Act but no maximum price. He must deposit at least \$5 per acre. We will take a man who has held a mining property for years. He believes by law that it belongs to him. Another man may go and obtain a permit from the Crown, go on to his property and measure out 50 acres, he offers \$100,000, which this man must take or lose his property. That is a most outrageous invasion of private rights. The next point I spoke of is whether this tax (assuming it to be a tax), is of such a nature as to be unreasonable and against the public policy of the Dominion. As regards some mines it may be said that it is not a very heavy tax, but of course as to its being reasonable or unreasonable, that is within the right of the legislature that has power to pass the law to say.

Mr. SEDGEWICK—Is the 3 per cent royalty on the gross value of the output at the pit's mouth?

Hon. Mr. IRVINE—Yes. If you get a large quantity of minerals and for one reason or another you cannot sell them, you have got to pay this 3 per cent not only on the minerals themselves but on the cost of producing them.

Mr. SEDGEWICK—Who determines the value?

Hon. Mr. IRVINE—They have inspectors who tax the value.

Mr. SEDGEWICK—Have they any principle upon which to fix the value?

Hon. Mr. IRVINE—No; there is no principle. There is no doubt that this tax weighs very heavily upon a large number of the mining industries of the country, and more particularly with regard to those industries where the marginal profit is very small, and the quantity produced very large and a great number of men employed. Of course the fact of a number of men being employed is included in the small margin of profits. Supposing a man is working a mine, and he with difficulty makes a very small profit. If you bring in a tax of 3 per cent on the gross output of that mine, you may walk off with all his profits and make him pay the government something out of his capital. Now, the effect of this will be to put a stop to a large number of mining industries in which the Dominion has a very important interest. It is in the interest of the whole country



that these industrial enterprises should succeed, and if the provincial government kills that by putting on a tax, it appears to me that the Act is one which the Dominion government ought to disallow.

Mr. SEDGEWICK—If it was perfectly clear that the object of this provincial Act was to kill a particular industry, the government would perhaps have good grounds to do so. We could not disallow an Act because it affects a particular industry, unless clearly shown that the intention of the Act was bad and was aimed at the policy of the government as a whole. For instance, the legislature of Quebec has taxed the banking business very seriously, so as to prejudicially affect the banking interests, but we could not disallow that Act.

Hon. Mr. IRVINE—They put a heavy tax on banks, but they did not put anything to seriously affect banking commerce.

Mr. SEDGEWICK—They have compelled insurance companies to take out licenses in every town in which they are established. However, it seems to me that the imposition of a 3 per cent tax would not be sufficient to justify the disallowance of the Act.

Hon. Mr. IRVINE—But suppose it were shown that in certain branches of the mining industry the effect of this would be to stop them altogether?

Mr. SEDGEWICK—Well, I think that is a matter for the province to look after. While the Dominion government has a general interest in the whole of the trade and industries of the country, I do not think it can interfere here.

Hon. Mr. IRVINE—At the last session of the Dominion Parliament all machinery imported for mining purposes was put on the free list—all not manufactured in Canada. Well now, that of course was of great assistance, but if the province of Quebec comes in and takes off the benefit of that by levying a tax, they are certainly defeating the object which the Dominion tried to attain by taking off that import tax.

Mr. SEDGEWICK—They may do the same thing by coming into the market and borrowing a lot of money. The point is, where shall we draw the line.

Hon. Mr. IRVINE—I think that the government are bound to disallow the Act for the first reason given—the interference with private rights.

*Deputy Minister of Justice to Deputy Attorney General of Quebec.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd December, 1891.

SIR,—Adverting to my letter to you of the 27th ultimo, on the subject of the petition asking for the disallowance of the Quebec Mining law of 1890, I beg to state that in considering the arguments of the Honourable the Attorney-General and the petitioners, it appears to the Minister of Justice that one contention of the petitioners deserves further consideration. It may be summarized as follows:—

Whatever may be the law with respect to grants issued by the French Crown before the cession in which the mines were not specifically granted, the substituted article 1,425 does not correctly state the law with respect to the patents made by the British Crown subsequent to the cession in which the mines were not expressly reserved. Such grants, it is contended, would, under the English prerogative law which governs them, include the mines and minerals other than gold and silver, without their being expressly mentioned. In fact, it is contended that the whole jurisprudence of the country went to establish that where lands were granted without reserve of minerals, all baser metals became the property of the grantee.

Reading the substituted article 1425 in connection with the definition of the words "private lands" given in the interpretation clause of the Act, it would cover all lands whether granted previous to 1880 or not, in the grant of which no mention is made of mines and minerals. It, therefore, virtually amounts to a confiscation of all mines or mining rights in such lands.

The Minister of Justice will be very pleased to receive any observations which the Honourable the Attorney General may see fit to offer with respect to the above points.

As the time within which the Act must be reported upon will expire in a few days, I trust that I may be informed at once whether any observations on these points are to be made.

I have, &c.,

ROBT. SEDGEWICK,  
*Deputy Minister of Justice.*

*Hon. Attorney General of Quebec to the Honourable the Minister of Justice.*

QUEBEC, 12th December, 1891.

SIR,—I duly received the letter of Mr. Sedgewick, Deputy Minister of Justice, dated the second December instant, in which he states that, in the matter of petition asking for the disavowal of the Quebec Mining Law of 1890, in considering the arguments of the petitioners and my arguments, it appeared to you that one contention of the petitioners deserved further consideration, which said contention Mr. Sedgewick summarizes as follows:—

“Whatever may be the law with respect to grants issued by the French Crown before the cession in which the mines were not specifically granted, the substituted article, 1425 does not correctly state the law with respect to patents made by the British Crown subsequent to the cession, in which the mines were not expressly reserved. Such grants, it is contended, would, under the English prerogative law which governs them, include the minerals other than gold and silver without their being expressly mentioned. In fact it is contended that the whole jurisprudence of a country went to establish that where lands were granted without a reserve of minerals, all the baser metals became the property of the grantee.”

“Reading the substituted article 1425 in connection with the definition of the words “private lands,” given in the interpretation clause of the Act, it would cover all lands whether granted previous to 1880 or not, in the grant of which no mention is made of mines and minerals. It therefore virtually amounts to a confiscation of all mines or mining rights in such lands.”

On this point I now beg to offer the following additional remarks:

At page 2 and following, of my letter of the 31st July last, I claim to have established that “according to the old French law, mines constituted a property distinct from the soil which covered them, and these properties belonged to the Crown, and did not become private property, except by an express act of the Sovereign,” and that the right of ownership in mines which belonged to the King of France passed, at the cession, to the British Crown, (*Vide Treaty of Paris, 1763, section IV, pages 61 and 62, Houston’s Constitutional Documents of Canada*).

To avoid the consequences resulting from the application of this rule the petitioners for disavowal now contend that, since the cession, mines in this province are no longer subject to the old French law, but are governed by the public law of England relating to prerogatives of the Crown, which confers to the subject in whose lands they are discovered, all mines excepting mines of gold and silver, to which by his prerogative, the King is entitled, and the jurisprudence of this province is unanimous on this point.

This contention of the petitioners for disavowal, I hold to be erroneous, for the following reasons;

The mineral estate (trefonds) in a land, is by nature an immovable property (2 Aubrey vs. R. page 11) and, as such, continued after the cession of this country to England, to be regulated by the laws in force in this province, under the French domination, as modified by our statutes, which laws were preserved to us by the capitulation, treaties and our different Constitutional Acts.

The Quebec Act, 1774, section 8, Houston, page 93. The Constitutional Act, 1791, section 33, Houston, on page 124. The Union Act, 1840, section 46, Houston, page 168. The Confederation Act of 1867, section 129, Houston, page 212.



The jurisprudence of this province is in perfect accord with the doctrine I have just laid down, as can be ascertained by the holding in the case of *Regina vs. de Lery et al.*, already cited in my letter of the 31st July, 1891, 6 Legal News, page 4021—*1st.* By the old law of France which is in force in Canada, the right to minerals did not pass by a grant of lands, to the grantee without special words, but remained in the Sovereign. *2nd.* The King of England at the cession succeeded to this right. *3rd.* The Sovereign could grant the right to minerals to whomsoever he pleased, and in such case the owners of the soil had no right except to an indemnity for any damages they might suffer by the mining operations.”

The fact that the right to mines is a prerogative of the Crown does not prevent the old French civil law, as modified by our Statutes, to apply to mines in our province. The prerogatives of the Crown are of two kinds; direct prerogatives, and incidental or minor prerogatives. (Bowyer, Constitutional Law, page 134.)

The right to mines is one of the minor prerogatives.

It is quite true that the direct prerogatives of the Crown are governed by the public law of England, but the same does not apply to the minor prerogatives of the Crown in this province; they are governed by our civil law, which is the Old French civil law as modified by our statutes.

Chitty, on Prerogatives, page 25, expresses himself as follows :

“But in countries which, though dependent on the British Crown, have different and local laws for their internal government, as for instance the plantations or colonies, the minor prerogatives and interests of the Crown must be regulated and governed by the peculiar and established law of the place.” (Idem, pages 29-30 31.)

Our courts have several times applied this principle.

Chief Justice Reid, in rendering judgment on the 30th July, 1828, in a case of the Attorney General *pro Rege*, appellant, and Jane Black, respondent, expressed himself as follows in the holding of the case :—

“Where the greater rights and prerogatives of the Crown come in question, recourse must be had to the public law of the empire, as that alone by which they can be determined; but where its minor prerogatives and interests are in question, they must be regulated by the established law of the place where the demand is made.” In this case Chief Justice Reid gives the following extract from Chitty :—

“That in the colonies and plantations, the minor prerogatives and interests of the Crown must be regulated and governed by the particular and established law of the place where the demand is made,” and accordingly, where peculiar laws and process exist, as in Guernsey and Jersey, the King himself, in “seeking to recover his own debts therein, must resort to such laws for redress.” (Stuart’s reports, pages 324, 325, 326.)

Later on, on the 22nd December, 1874, Chief Justice Dorion, on rendering the judgment of the court of appeals in the case of Dame Georgiana H. Monk, *esqualité*, appellant, and the Honourable G. Ouimet, Attorney General, *pro Regina*, respondent, expressed himself as follows :—

“When this colony passed under the dominion of the Crown of England, the maintenance of the civil laws then in existence was guaranteed by treaty. These laws, as altered by competent authorities, are still in force, and are as binding on the Crown as they are upon any of its subjects, except in cases where the higher prerogatives, which form part of the public law throughout the whole empire, are affected. The right to be paid in preference to other creditors of a common debtor, does not form part of the higher prerogatives of the Crown, which are part of the public law, but belong to what are termed the minor prerogatives, those which are not essential to the supremacy of the Crown, and which are controlled by the *private or municipal law of that part of the empire where they are claimed.*

Vide also Chitty on Prerogatives, 25, 29, 31; Chambers Colonial Opinions, 88, and Attorney General and Black, Stuart’s Reports 324, where this rule has been followed.”

I respectfully submit that the above authorities establish beyond doubt that, in our province, mines are regulated by the old French civil law, as modified by our statutes.

The contention of the petitioners for the disavowal, that our courts have invariably held that the ownership of mines on lands granted in 1880, without reserve of mines



thereon by the Crown, belong to the surface owners, is absolutely unfounded. The petitioners do not cite a solitary decision in support of this alleged jurisprudence, for the obvious reason that no such decision exists. The few reported decisions on this question, amongst which that of *Regina vs. deLery*, already cited, absolutely lay down a doctrine contrary to that claimed by the petitioners.

Wherefore, I respectfully persist in praying that the petition of A. Morrison and others, for the disavowal of the Quebec Mining Act, 54 Vic., chap. 15, be dismissed.

I have, &c.,

J. E. ROBIDOUX,  
*Attorney General.*

*The Hon. the Minister of Justice to Honourable Attorney General of Quebec.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th December, 1891.

MY DEAR ATTORNEY GENERAL,—I am much obliged for your letter of the 12th instant, having reference to the petition for the disallowance of the Quebec Mining Law of 1890.

Will you permit me to say that I am still far from being convinced that Crown grants in your province since the cession have the limited effect which you claim they have, and I am likewise somewhat in doubt as to the limited character of Crown grants issued prior to the cession. The statute under consideration makes the statement "*that it is admitted that mines, whether upon public or private lands, belong to the Crown.*" If the legislation in question were really based upon an admission, it ought to appear that the person making the admission had authority to make it from those who would be affected by it. It seems clear, however, both from the statute itself and from the correspondence, that your legislature intended to legislate in respect only to mines which, as a matter of fact, belong to the Crown. I may be excused for suggesting that all difficulty might be removed by an amendment making it clear that the Act only applied to mines and minerals which belonged to the Crown, without making any specific declaration that this includes all minerals in lands granted by the Crown, although not specifically reserved. In that case the legal questions which have been raised, and in respect of which there may, I think, be considerable doubt, would be left for determination by the courts. Such an amendment, it appears to me, while in no wise impairing the just rights of the province, would remove any objection to the Act on the ground of its being a confiscation of existing private rights, as claimed by the petitioners. An assurance from you that your government, at the next session of the legislature, would promote an amendment to the effect suggested, would materially aid me in making my report to his Excellency in Council on the subject of the Quebec legislation of last session.

Faithfully yours,  
J. S. D. THOMPSON.

*The Hon. the Minister of Justice to Honourable Attorney General of Quebec.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd December, 1891.

MY DEAR ATTORNEY GENERAL,—I beg to inclose you copies of certain papers and correspondence having reference to the disallowance of the Quebec Mining Act of last session of your legislature. You will observe that my last letter to your predecessor was written on or about the day when he ceased to be Attorney General, and I have not received any reply from him. I send the whole correspondence to you in the hope that I may be able to obtain from you at an early date an assurance that the Act will be amended at the next sitting of your legislature in the manner I have suggested.

Yours faithfully,  
J. S. D. THOMPSON.

*Honourable Attorney General of Quebec to the Hon. the Minister of Justice.*

DEPARTMENT OF ATTORNEY GENERAL, QUEBEC, 8th January, 1892.

MY DEAR SIR JOHN,—Referring to your letter of the 16th December last, addressed to the Attorney General of this province and having reference to the petition for the disavowal of the Quebec Mining Law of 1890; after having submitted the same to my colleagues, I am authorized to inform you that we have come to the following conclusion as regards the proposal you made in the above-mentioned letter in the following terms:—

“I may be excused for suggesting that all difficulties might be removed by an amendment making it clear that the Act only applied to mines and minerals which belong to the Crown although not specifically reserved. In that case the legal questions which have been raised and in respect of which there may, I think, be considerable doubt, would be left for determination by the courts.”

Without in any way waiving any rights this province may have to legislate on this matter, and without prejudice to said rights, this government pledges itself to promote at the next session of the legislature of this province an amendment to the said Quebec Mining Law of 1890, to the effect suggested by you, as above.

Should you not find this letter a sufficient assurance to enable you to make your report to his Excellency the Governor General in Council on the subject of the Quebec legislation of the last session, this government is ready to pass an Order in Council to the same effect.

I remain, yours very truly,

T. CHASE CASGRAIN,  
*Attorney General.*

*REPORT of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th January, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th January, 1892.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report on two Acts (chapters 15 and 22) passed by the legislature of the province of Quebec in the session held in the year 1890, as follows:—

Chapter 15. An Act to amend and consolidate the Mining Law.

This Act is a consolidation and amendment of the statute law of the province of Quebec in relation to mines. It purports to impose a royalty upon the mines therein mentioned, the royalty upon gold and silver being  $2\frac{1}{2}$  per cent on the gross weight, and on the other minerals 3 per cent on the merchantable value. The Act contains the following clauses:

1425. “As it is admitted that mines, whether upon public or private lands, belong to the Crown, any person discovering a mine may purchase the same by complying with the provisions of this section.”

“Upon private lands, the occupant of the surface has the first right to purchase such mine upon the conditions imposed by law and the regulations”; and section 8 (1421) provides that “the words ‘private lands’ designate all lands conceded or otherwise alienated by the Crown, other than mining concessions or lands conceded by the Crown as such.”

The undersigned has annexed to this report a petition, addressed to your Excellency from a number of gentlemen interested in mining lands, together with correspondence between himself and the Attorney General of the province of Quebec having reference to the prayer of that petition.

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In view of the assurance contained in the communication, dated the 8th instant, from the Hon. Mr. Attorney General Casgrain, the undersigned has the honour to recommend that this Act be left to its operation.

Chapter 22. An Act respecting the Court of Queen's Bench (Crown side.)

This Act after reciting that "the number of judges who now compose the Court of Queen's Bench in the province is insufficient for the effectual administration of civil and criminal justice within their jurisdiction," and that "it is advisable that two additional judges be appointed for the said Court," provides that, hereafter, the Court of Queen's Bench shall be composed of eight judges instead of six.

Although recommending that the said Act be left to its operation, the undersigned does not concur in the statement contained in the preamble above referred to, as to the insufficiency of the Court of Queen's Bench to perform its functions as at present constituted, and this report, if approved, is not to be taken as an expression of opinion on behalf of your Excellency's government that the appointments provided for by the Act should be made.

Respectfully submitted.

JNO. S. D. THOMPSON,

*Minister of Justice.*



## QUEBEC LEGISLATION, 1891.

NOTE.—Owing to the dismissal of the Executive Council, by his Honour the Lieutenant-Governor of Quebec, no session of the legislature of that province was held in 1891.

## QUEBEC, 55th–56th VICTORIA, 1892:

(1ST SESSION—8TH LEGISLATURE.)

*His Honour the Lieutenant-Governor of Quebec to the Honourable the Secretary of State :*

GOVERNMENT HOUSE, QUEBEC, 5th July, 1892.

SIR,—I have the honour to report to his Excellency the Governor General in Council that I have again reserved, for the signification of his Excellency's pleasure, a bill entitled "An Act to legalize the marriage of Henri Aimé Bourassa and Dame Purissima Robert." I beg to refer you to my previous report dated 30th April, 1890, about this bill, which has the same wording as the one previously reserved and reported upon as above. I am further informed that the object of this bill is to secure for the child of the said Aimé Bourassa and Purissima Robert a share in the intestate estate of an uncle ; and this gives the bill the nature of *post facto* legislation which would be unjust.

I have also to report that I have reserved another bill entitled "An Act to incorporate La Banque Hypothécaire Canadienne," for the following reasons: The British North America Act 1867, has given to the Dominion Parliament alone the power to legislate on "Banking and the incorporation of Banks"—s. 91, ss. 15. Although, from the reading of the bill, this company may not be classified as a bank, its title, La Banque Hypothécaire Canadienne, is apt to create confusion and lead the public to the assumption that this company is operating as a bank under a Dominion Charter. This, it seems is an objectionable feature.

I will feel much obliged by being acquainted with the action of the Honourable the Privy Council in this matter.

I have, etc.,

A. R. ANGERS,  
*Lieutenant-Governor.*

*The Canadian Bankers' Association to the Hon. the Minister of Justice.*

CANADIAN BANKERS' ASSOCIATION, MONTREAL, 7th July, 1892.

SIR,—We are advised that his Honour Lieutenant-Governor Angers has reserved his sanction to the Assembly Bill 36, passed at the recent session of the Quebec legislature, entitled "An Act to incorporate La Banque Hypothécaire Canadienne," and has referred the same to the federal authorities.

As the time has gone by for opposing the measure at Quebec we now beg to express our objection to the Act direct to your department, as follows, and shall be glad to be informed whether such a statement of our objections is sufficient, or whether it is incumbent upon us to address a formal memorial to the government in the premises :

1st. We object to the word "Banque" in the proposed title of the corporation, as being a violation of clause No. 100 of the Bank Act ;

2nd. We object to their being granted under clause 3, title II, power to loan otherwise than on hypothec to town or rural corporations ; clause 6, title II, power to

make loans to the government of the province ; clause 8, title II, power to receive with or without interest, moneys, securities and bullion ; clause 9, title II, power to lend on security of warrants.

The preamble of the Act also refers to loaning on warrants and bills of lading.

All of these powers, we claim, are banking powers which cannot be granted to any corporation by the provincial legislature, and we now petition that the Act be disallowed as it stands.

I am, &c.,

G. HAGUE,  
*President.*

*Petition of the Canadian Bankers' Association.*

*To the Right Honourable Sir Frederick Arthur Stanley, G.C.B., Governor General of Canada, in Council :*

MAY IT PLEASE YOUR EXCELLENCY :

The memorial of the Canadian Bankers' Association acting and represented by their President and Secretary-Treasurer.

Humbly sheweth :—

1. That your memorialists comprise thirty-three (33) out of the total number of thirty-nine (39) banks chartered under the Bank Act, and represent an aggregate paid-up capital of over fifty-nine millions of dollars.

2. That your memorialists have taken cognizance of a certain bill, known as Assembly Bill No. 36, passed at the recent session of the legislature of Quebec, entitled "An Act to incorporate La Banque Hypothécaire Canadienne."

3. That his Honour the Lieutenant-Governor has reserved his sanction to the said bill, and is about to transmit the same to the Federal government at Ottawa for consideration ;

4. That your memorialists humbly urge that the several persons praying for the Act of Incorporation and using the title "Banque", are thereby guilty of the offence against the "Bank Act" named in clause No. 100 of the Act ;

5. That in the preamble of the said Assembly Bill No. 36, power is named to loan on warrants and bills of lading ;

6. That under clause 3 of section 5, title II, of said Assembly Bill, power is asked to loan otherwise than hypothecs, to town, rural or other corporations ;

7. That under clause 6 of section 5, title II, power is asked to make loans to the government of the province ;

8. That under clause of section 5, title II, power is asked to receive, with or without interest, moneys, securities and bullion ;

9. That under clause 9 of section 5, title II, power is asked to lend on security of warrants ;

10. That these privileges enumerated in paragraphs Nos. 5, 6, 7, 8 and 9 of this present memorial, are banking privileges which are not within the rights of the provincial legislature to confer ;

Wherefore your memorialists humbly pray that the said Act of Incorporation of La Banque Hypothécaire Canadienne be disallowed.

And your memorialists will ever pray. Dated at Montreal this 16th day of July, 1892.

On behalf of the Executive Council. For the Canadian Bankers' Association.

G. HAGUE, *President.*

W. W. L. CHIPMAN, *Sec.-Treas.*

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st March, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th February, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has had referred to him two bills passed by both houses of the legislature of the province of Quebec, during the session of 1892, intituled respectively : an Act to incorporate the "Credit Canadien," and an Act to legalize the "Marriage and contract of marriage of Henri Aimé Bourassa and Dame Purissima Robert," but reserved by his Honour the Lieutenant-Governor for the signification of your Excellency's pleasure thereon.

It would seem that this action in respect to these Bills is due to some doubt as to whether they were within the legislative authority of a provincial legislature.

Should the bills be passed as statutes of the province, the undersigned may have an opportunity of considering the questions involved, but for the present he recommends that your Excellency take no action in respect thereto, and that his Honour the Lieutenant-Governor of the province of Quebec be so informed.

Respectfully submitted,

JNO. S. D. THOMPSON,  
Minister of Justice.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd June, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1893.

*To His Excellency the Governor General in Council.*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Quebec, in the session thereof held in the 55th and 56th years of Her Majesty's reign (1892), the chapters of which are contained in the annexed schedule—received by the Secretary of State for Canada on the 15th day of August, 1892; and he is of opinion that they are unobjectionable, and may be left to their operation.

Respectfully submitted.

J. A. OUIMET,  
Acting Minister of Justice.

*Schedule.*

Chapters 1 to 55, 59 to 73, 75 to 115.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd June, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts of the legislature of the province of Quebec, passed in the session thereof, held in the 55th and 56th years of Her Majesty's reign (1892), certified copies of which were received by the Secretary of State of Canada on the 15th day of August, 1892.



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Chapter 56. "An Act to consolidate the various Acts affecting the incorporation of the town of Iberville."

Chapter 57. "An Act to incorporate the town of Cookshire."

Chapter 58. "An Act to incorporate the town of Scotstown."

In recommending that these Acts be left to their operation, the undersigned must not be understood as indicating that all the powers and authority which by them are conferred upon municipal institutions in respect to their power of passing by-laws, are within the legislative competency of a provincial legislature.

Chapter 74. An Act to incorporate the Quebec Exposition Company."

Section 14 of this Act provides that whoever wilfully and maliciously damages or destroys anything on the exhibition grounds shall be liable to a fine.

The undersigned is of opinion that this provision is *ultra vires* of the provincial legislature, and entrenches upon those provisions of the criminal law of Canada which deal with malicious injuries to property. He respectfully recommends, however, that the Act be left to its operation.

Respectfully submitted.

J. A. OUIMET,

*Acting Minister of Justice.*

## QUEBEC—56th VICTORIA 1893.

(2ND SESSION.—8TH LEGISLATURE.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th February, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 12th February, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Quebec in the fifty-sixth year of Her Majesty's reign (1893)—the chapters of which are contained in the annexed schedule—received by the Secretary of State for Canada on the 7th day of March, 1893 ; and he is of opinion that they are unobjectionable, and may be left to their operation.

Chapter 76 has been reserved for a separate report.

The undersigned also recommends that if this report be approved, a copy of the same, with a copy of the schedule of the Titles of the Acts, be sent to the Lieutenant-Governor of the province for his information.

Respectfully submitted,  
JNO. S. D. THOMPSON,  
*Minister of Justice.*

### *Schedule*

Chapters 1 to 75, 77 to 101 inclusive.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th February, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 12th February, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon Chapter 76, passed by the legislature of the province of Quebec, in the fifty-sixth year of Her Majesty's reign (1893), as follows :—

“Chapter 76.—An Act to incorporate the Compagnie Hypothécaire.”

The company is incorporated, among other objects, for the purpose of loaning money upon immovables situated in the province of Quebec, and upon other securities.

By sections 6, 7 and 8 it is provided as follows :—

“6. The partnership may create and issue obligations representing its operations, comprising loans to private individuals, to municipal or school corporations, to fabriques and church trustees, public securities, bonds and debentures of municipal and school corporations on hand, and others not described herein.

“7. The obligations created by the partnership shall be divided into six categories :—

“1. Those redeemable at par, with a fixed term for redemption, without prizes ;

“2. Those redeemable at par, within a definite delay, without any period being fixed for their redemption before such delay, and by means of a drawing of numbers, without prizes ;

"3. Those redeemable with premiums at a fixed term for redemption, without prizes ;

"4. Those redeemable at par, with a right to participate in prizes, within a definite delay, without any period being fixed for their redemption before such delay, and by means of a drawing of numbers.

"5. Those redeemable with a premium, within a definite delay, without any period being fixed for their redemption before such delay, and by means of a drawing of numbers without prizes.

"6. Those redeemable at par, with a premium and a right to participate in prizes, within a definite delay, without a period being fixed for their redemption before such delay, and by means of a drawing of numbers. The board of management shall determine the duration of the delay and the date of the drawing."

"8. Prizes and premiums attached to such obligations and payable when they shall be withdrawn from circulation shall not exceed 2 per cent per annum on the capital represented by the series of such obligations ; and the aggregate amount of the interest and of the percentage for prizes or premiums, shall not exceed the rate of interest authorized by the laws in force in the province of Quebec. The board of management shall determine the importance and the method of apportionment thereof."

These provisions appear to the undersigned to contemplate such a disposal of money by lot as would be illegal under section 205 of the Criminal Code. The provincial legislature has, of course, no power to authorize any Act which has been constituted an offence by Parliament. There may, however, be room for the exercise of the power conferred upon the company without any infringement of the section of the Criminal Code referred to, and any question which may arise as to the legality of the company's business may be conveniently left to the determination of the courts.

The undersigned recommends, therefore, that the Act be left to its operation.

The undersigned further recommends that, if this report be approved, a copy of the same be sent to the Lieutenant-Governor of the province for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*



## QUEBEC—57th VICTORIA, 1894.

(3RD SESSION, 8TH LEGISLATURE.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th October, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th September, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Quebec, in the 57th year of Her Majesty's reign (1894),—the chapters of which are contained in the annexed schedule—received by the Secretary of State for Canada on the 23rd day of January, 1894, and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts have been reserved for a separate report.

The undersigned also recommends that if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor of the province for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

### *Schedule.*

Chapters 1 to 49, 51 to 58, 60 to 62, 64, 65, 67 to 70, 72 to 74, 76 to 82, 84 to 106.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th October, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 12th September, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts, passed by the legislature of the province of Quebec, in the 57th year of Her Majesty's reign (1894), received by the Secretary of State for Canada, on the 23rd day of January, 1894, as follows :—

Chapter 50. "An Act respecting the early closing of shops."

This statute provides that in every city and town the municipal council may make by-laws, fixing the time for closing and opening of stores, within the municipality, the hours to be so fixed, not being earlier than 7 o'clock in the evening, nor later than 7 o'clock in the morning.

It has been represented to the undersigned that this enactment is "an encroachment on the powers of the Dominion Parliament to regulate trade and commerce," and that "such a matter has no connection with municipal institutions, nor can it be said to be legitimately within the subjects of police regulation."

The enactment does not, however, in the opinion of the undersigned, come within any of the powers assigned to Parliament by the British North America Act, but rather is a matter exclusively for provincial legislation, under one or all of the following subjects mentioned in section 92 of that Act.

"Municipal institutions in the province. Property and civil rights in the province. Generally all matters of a merely local or private nature in the province."

The undersigned considers the statute unobjectionable, and that it should be left to its operation.

Chapter 59, "An Act to amend the various Acts relating to the corporation of the city of Three Rivers."

By section 14 of this Act it is provided that the council shall have power to make By-laws "To prevent obstructions of any nature whatsoever in the streets, and to compel every railway company to put up gates with keepers, at its own expense, on the roads and streets crossed by such railway in the city, and impose a fine of twenty dollars for each day that it refuses or neglects to do so, after being thereunto duly required ;

"To prevent the obstruction of its streets by railway cars, locomotives and engines, and impose on every railway company or its employees, a fine not exceeding twenty dollars, for each infringement of the by-laws in that respect."

Chapter 63, "An Act to consolidate the Acts respecting the corporation of the town of Salaberry de Valleyfield."

By sections 148, 149, and 197 it is provided that the council may make by-laws to "compel all railway companies to make, construct and maintain, at all hours of the day and night, such gates, fences or other works, as may be deemed necessary for the protection of the citizens, vehicles and animals passing through such streets or public places : and all such companies shall be liable to such penalty as the company may impose."

149 : "To prevent the obstruction of the streets by railways, cars or trains of cars, locomotives or other engines of railway companies, and determine what precautions the conductors, engine-drivers or stokers of such trains, cars or engines shall take, when crossing or about to cross the streets in the town, and impose on the company a fine for each infringement of the by-laws passed for that purpose,"

197 : "Subject to the provisions of the general laws respecting railways, compel railway companies to keep in order the streets, portions of streets and public squares through which their trains run, in such manner as the council by resolution, or the town inspector, may indicate."

"If such companies neglect or refuse to do such work, the council may have the same done, and recover the amount thereof from such companies in default."

The undersigned observes that the Railway Act mentions the precautions which are to be adopted upon streets and crossings by railway companies under the legislative authority of Canada, and otherwise defines the statutory duties and obligations of such companies to the public and the municipalities through which their railways pass, and it is not competent for a provincial legislature to legislate with regard to that subject.

The several sections above referred to are, however, applicable to provincial railways, and it does not appear to the undersigned that they are intended to have any more extended application. If, however, such provisions can be construed as intended to extend to railways under Dominion control, the companies thereby effected would have a remedy in the courts ; and the undersigned, therefore, does not consider that with regard to these statutes, the power of disallowance should be exercised.

Chapter 66 : "An Act to amend and consolidate the charter of the town of Chicoutimi."

By section 61, paragraph (c) it is provided that the council shall have power to make by-laws "for the maintenance of good order, for the preservation of good morals, the closing and suppression of any disorderly house or building, whatsoever, for punishing the occupants of such house or building, and the persons who frequent the same."

The undersigned refers to sections 198 and 307 of the Criminal Code, which provide for the punishment of keepers and occupants of disorderly houses, and states that this paragraph appears to contemplate the punishment of such offenders by virtue of a municipal by-law. To that extent the enactment is beyond the power of the provincial legislature. It appears to the undersigned, however, that by-laws might be framed under the paragraph in question, which would not be open to objection, and the courts

would afford a remedy as to any by-law which might properly be considered *ultra vires*. The remaining provisions of the statute in question appear to be unobjectionable.

Chapter 71 : "An Act to amend the Act 44-45 Victoria, chapter 44, incorporating the Quebec, Montmorency and Charlevoix Railway Company and amendments thereto, and granting additional powers to the said company."

By section 6 the company is empowered to build, or charter, and operate, steam or other vessels on the St. Lawrence and Saguenay River and all other lakes and rivers touched by the said railway.

The undersigned desires to point out that the provincial legislature could not empower the company to build or operate vessels on waters beyond the limits of the province. The section referred to is, nevertheless, broad enough in its terms to authorize the company to build and operate vessels upon any part of the St. Lawrence and other rivers and lakes touched by the railway, even although not within the province.

The undersigned recommends that this objection be called to the attention of the government of the province, in order that the authority intended to be conferred by the section may be so limited by amendment, as not to exceed that which the legislature has power to grant.

Chapter 75 : "An Act to incorporate 'The Merchants' Fire Insurance Company.'"

By section 11, it is provided that "the company may insure, against fire, movables and immovables of all kinds within the limits of the province, on such conditions as it may deem expedient, re-insure its risks and those of other companies, and generally do all other transactions and things necessary for obtaining the object of its incorporation, having deposited, with the provincial treasury the sum of \$25,000 as a guarantee or a security for the policy holders in the said company."

The undersigned construes this section as merely intended to define the conditions under which, so far as provincial authority is concerned, the company can be authorized to carry on business, and not as intended to authorize the company to disregard any of those provisions of the Insurance Act with which it will be necessary for it to comply, before engaging in the business of insurance, it being obviously beyond the power of the legislature to dispense with the requirements of the Insurance Act.

The undersigned respectfully recommends that the several statutes mentioned in this report be left to their operation, and that a copy of the report, if approved, be sent to the Lieutenant Governor of the province of Quebec, for the information of his government.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Deputy Minister of Justice to the Hon. the Attorney General, Quebec.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th September, 1894.

SIR,—I am directed to transmit herewith copy of petition of Mr. George Ball and others (which please return) addressed to his Excellency in Council, praying for the disallowance of an Act passed at the last session of the Quebec legislature, being 57 Victoria, chapter 83.

You observe that the petitioners ask for the disallowance of this measure upon the ground that it interferes with the vested interest guaranteed to them under a previous statute, the contention being, as I understand it, that the effect of the Act in question is to provide for the taxation of the taxable property, of the Roman Catholics of the Parish of St. Jean Baptiste of Nicolet for the purpose of constructing a cathedral, the entire cost of which the Episcopal corporation has, by a previous statute, assumed and undertaken to be solely chargeable with.



Before reporting upon the statute to his Excellency in Council, the Minister of Justice will be pleased to receive such observations as you may desire to offer, with regard to the complaint of the petitioners and legislation in question.

I am, &c.,

E. L. NEWCOMBE,

*Deputy Minister of Justice.*

(Translation.)

*Petition from George Ball and others to His Excellency the Governor General.*

*To His Excellency the Governor General in Council :*

MAY IT PLEASE YOUR EXCELLENCY :

The petition of the undersigned humbly sheweth ;

1. That amongst the Laws passed by the legislature of the province of Quebec and sanctioned on the 8th January, 1894, is the following law :

57 Victoria, Chapter LXXXIII. " An Act granting an extension of rights to the municipal corporations of the towns of Nicolet and of St. Jean Baptiste de Nicolet."

Considering that the Roman Catholic Episcopal Corporation of Nicolet, represented by its President Mgr. Elphege Gravel, by a petition, and the inhabitants (*francs-tenanciers*) by an unanimous resolution adopted to that end at the regular meeting held on the 26th November last, asked, and now ask, that authority be granted to the municipal corporation of the town of St. Jean de Baptiste de Nicolet, to subscribe a certain amount for the construction of the Catholic Cathedral of Nicolet.

2. That your petitioners are residents of Canada, that is to say of the town of Nicolet, county of Nicolet, province of Quebec, and that they are owners of real estate in the town of Nicolet.

3. That the law above quoted affects your petitioners, and has the effect of imposing a tax upon their properties.

That this law annuls and destroys the acquired rights of your petitioners and other proprietors of real estate in the said town of Nicolet, which said rights were guaranteed to them for ever under the operation of the statute 49-50 Victoria, chapter 42, which is as follows :—

(*Here follows text of Act.*)

\* \* \* \* \*

That it appears from the Act secondly above quoted that the Episcopal Corporation of Nicolet, when it became assignee of all the assessed property of the Catholic parish of St. Jean Baptiste de Nicolet, assumed at the same time its liabilities, and became responsible for the cost of maintenance and of re-construction of the buildings for worship, so that the parishioners would never in any way be compelled to contribute to such maintenance or re-construction.

That this right then became a vested right for each of them for ever, and for all the owners of real estate in the said Catholic parish of St. Jean Baptiste de Nicolet of which the town of Nicolet forms part.

That the law firstly above cited, if it be not disallowed, would have the effect to destroy this individual right so acquired, by a simple resolution of the majority of the ratepayers.

5. That the said law is consequently *ultra vires* and unconstitutional.

Wherefore your petitioners pray your Excellency to disallow the above mentioned law as prayed for.

And your petitioners will ever pay.

Town of Nicolet, 29th May, 1894.

GEORGE BALL

AND SEVEN OTHERS.

*Hon. Attorney General of Quebec to the Honourable the Minister of Justice.*

DEPARTMENT OF ATTORNEY GENERAL, QUEBEC, 18th September, 1894.

DEAR SIR,—I beg to acknowledge the receipt of your letter dated the 11th inst., transmitting the copy of a petition of Mr. Geo. Ball and others, addressed to his Excellency the Governor General in Council, praying for the disallowance of an Act passed at the last session of the legislature, being 57 Vic. chap. 83, and stating that you will be pleased to receive such observations as I may desire to offer with regard to the complaint of the petitioners and legislation in question.

In answer I beg that I have carefully examined the petition in question and am of opinion as follows :

That it does not appear that the provincial legislature has exceeded its powers in enacting either statute nor has unwarrantably interfered with private rights in either case. The Act 49-50 Vic., cap. 42, was passed on a petition presented to the legislature by the Bishop of Nicolet, supported by the unanimous resolution of the freeholders of the parish of Nicolet, and handed over certain property to the Bishop, upon certain conditions as to the expenses of maintenance, &c., subject always, however, to article 10 of the Revised Statutes, and the Act 57 Vic., cap. 83, was passed upon a similar petition, supported by the unanimous resolution of the freeholders of the parish, and authorized two municipal councils to subscribe to the rebuilding of the cathedral and levy, for that purpose, a tax upon the freeholders of the parish who had authorized the petition for the Act.

Yours sincerely,

TH. CHASE CASGRAIN,  
*Attorney General.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th October, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th October, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon Chapter 83 passed by the legislature of the province of Quebec in the 57th year of Her Majesty's reign (1894)—received by the Secretary of State for Canada on the 23rd day of January, 1894, as follows :

Chapter 83 : An Act to grant extended powers to the municipal corporation of the town of Nicolet, and of St. Jean Baptiste de Nicolet.

A petition addressed to your Excellency in Council from George Ball and others, praying for the disallowance of this Act, has been referred to the undersigned.

The petition, together with the correspondence relating thereto, is hereunto annexed.

The petitioners claim that the statute should be disallowed, not because it is *ultra vires* of the legislature, but because, as the undersigned understands the petition to allege, it authorizes the imposition of a tax upon the taxable property of the Roman Catholics of the parish of St. Jean Baptiste of Nicolet, for the purpose of building a Roman Catholic Cathedral at that place, the entire cost of such building having been, as the petitioners contend, previously assumed by the Roman Catholic Episcopal Corporation of the diocese of Nicolet, under the provisions of chapter 42 of the statutes of Quebec passed in the year 1886.

The undersigned considers that it was at least incumbent on the petitioners to establish clearly to the satisfaction of your Excellency that the measure is one which

unwarrantably interferes with individual property or rights, and is not justified by any countervailing consideration in the public interest, and it does not seem to the undersigned that either of these conditions appear in the present case.

The undersigned observes that by the statute in question, it is recited that a resolution had been unanimously adopted by the freehold inhabitants of Saint Jean Baptiste of Nicolet, praying that authority might be granted to the municipal corporation of the town, to subscribe towards the rebuilding of the cathedral. This fact is not called in question by the petition, and it would appear to be a legitimate inference that the petitioners, if they have interests which are affected by the statute, which does not clearly appear from the petition, have been consenting parties to the movement which has resulted in the legislation in question.

Attention is called to article 10 of the Revised Statutes of Quebec, which as applied to the Act under consideration expressly reserved to the legislature, whenever the public good might require it, the power of repealing, revoking, restricting or modifying any power, privilege or advantage thereby secured to the petitioners, as, no doubt, would be the case without such enactment.

The undersigned further observes that the whole subject of this legislation seems to be within the powers conferred on the legislature of the province, and he does not consider that the case is one for the exercise of the power of disallowance vested in your Excellency.

The undersigned, therefore, recommends that the statute be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

(Translation.)

*Petition from Master Workman J. A. Rodier, and Executive Committee, District 19, Knights of Labour.*

MONTREAL, 11th October, 1894.

*To His Excellency the Governor General in Council :*

MAY IT PLEASE YOUR EXCELLENCY :

The humble petition of the undersigned ratepayers of the city of Montreal, P. Q., humbly sheweth :

That by Act 57 Victoria, chapter 57, intituled: "An Act to modify Act 54 Victoria, chapter 78, relating to the charter of the city of Montreal", the legislature of the province of Quebec was pleased to modify the charter of the city of Montreal, without the approval, and against the will of the regularly constituted municipal authority, and outside of the knowledge of the ratepayers, and in violation of the limited powers conferred upon it by the British North America Act ;

That the modifications so made to the said charter have had the effect of depriving the said ratepayers of the said city of the right of administering their own affairs and especially of disposing, without constraint, of their own moneys ;

That such provincial legislation is contrary to the public interest and an infringement upon the liberties and the right of property of the citizens by its effects, as well as by the means by which it was obtained ;

That moreover such provincial legislation is contrary to the dignity of the Crown, in whose name it was declared, under the pretense of a false preamble ;

That it appertains to your Excellency to safeguard in Canada, by the right of disallowance, the dignity of the Crown and the public interest, which are endangered by such provincial laws ;

That your petitioners are ready to substantiate before your Excellency in Council the facts set forth in this petition ;



Wherefore your petitioners, having for the purposes of the present petition elected domicile at the residence of Mr. Joseph Alphonse Rodier, Master Workman of District No 19, of the Knights of Labour, 109 St. Louis Street, Montreal, pray that your Excellency will be pleased to admit them in his honourable Council so as to hear the proof of their allegations and, after having heard them, to exercise his right of disallowance against the said Act, 57 Victoria, chapter 57, according to the wishes of your petitioners.

And your petitioners will ever pray.

J. A. RODIER,  
*Master Workman of District No. 19., Knights of Labour,  
and seven members of Executive Committee.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 30th day of October, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd October, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit a copy of a petition addressed to your Excellency in Council, dated 11th October, 1894, signed by J. A. Rodier and seven others, being the Executive Committee of District No. 19 of the Knights of Labour of Montreal, which was referred to the undersigned on the 15th instant.

The petition refers to an Act passed by the legislature of the province of Quebec in the fifty-seventh year of Her Majesty's reign (1894), being chapter fifty-seven, entitled : "An Act to amend the Act, Fifty-four Victoria, chapter seventy-eight, concerning the charter of the city of Montreal."

The petitioners having by their petition alleged several general objections to the statute in question, pray your Excellency "to receive them in your Honourable Council and hear the proof of their allegations, and, after the parties have been heard, to exercise your prerogative of disallowance with regard to the said Act."

The undersigned by his report, which was approved by your Excellency in Council on 9th instant; stated that, in his opinion, this statute was unobjectionable and might be left to its operation.

The undersigned, having considered the several objections set forth in the petition, does not at present see any reason for changing the opinion previously expressed. The objections urged by the petitioners are stated in a very general manner, and, while it is alleged that the legislature has exceeded the powers vested in it under "The British North America Act," the undersigned, from the expressions with which this objection is introduced, and having regard to the provisions of the statute in question which relate merely to the payment of the cost of widening certain streets in Montreal, entertains no doubt that the petitioners have mistaken the scope of the powers so vested in the provincial legislature.

As to the request of the petitioners for a hearing before your Excellency in Council, the undersigned observes that it has never been the practice of your Excellency in Council to hear petitioners orally, either for the purpose of proof or argument, and the undersigned recommends that the petitioners in the present case be so informed, and that such a request cannot be acceded to.

The undersigned also recommends that the petitioners be further informed that, while the character of their complaint, as gathered from the general allegation of their petition, would not appear such as to afford reason for any action on the part of Your Excellency, yet if they desire to submit a specific statement of their objection in writing within the time limited for disallowance, your Excellency will be pleased to give it due consideration.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## QUEBEC—58TH VICTORIA, 1895.

(4TH SESSION, 8TH LEGISLATURE.)

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 22nd October, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th October, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Quebec in the fifty-eighth year of Her Majesty's reign (1895), chapters 1 to 19, 21 to 109, received by the Secretary of State for Canada on the 2nd day of February, 1895 ; and he is of opinion that they are unobjectionable and may be left to their operation. Chapter 20 has been reserved for a special report.

The undersigned also recommends that if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant Governor of the province of Quebec, for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd October, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th October, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report upon chapter 20 of the Statutes of the province of Quebec passed in the fifty-eighth year of Her Majesty's reign (1895) entitled "An Act to amend the law relating to fisheries and fishing in the waters under the control of this province," which Act was assented to on 12th January, 1895, and was received by the Secretary of State for Canada on the 2nd of February, 1895.

This Act provides, among other things, that every dam, slide or other obstruction across or in any waters under the control of the province shall be provided by the owner or occupant, with a durable and efficient fish-way, where the Commissioner of Crown Lands determines it to be necessary ; that the place, form and capacity of the fish-way may be prescribed by the commissioner ; that every one violating this requirement shall incur a penalty ; that fish-ways shall be kept open and unobstructed, and shall be supplied with a sufficient quantity of water to fulfil the purposes of the law, during such time as may be required by the commissioner. A penalty is established for injuring or obstructing any fish-way or hindering fish in ascending or descending. The commissioner is also authorized to grant permission to certain persons to take, at any season, from any waters belonging to the crown, whether leased or unleased, breeding fish, in order to obtain ova for propagation purposes.

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These provisions, in the opinion of the undersigned, strictly relate to the subject of seacoast and inland fisheries, as to which, legislative authority is vested in parliament. They are further, in some respects, inconsistent with Dominion legislation which has already been enacted, covering the same ground. The provisions are, therefore, in the opinion of the undersigned, *ultra vires*.

Inasmuch, however, as there is a difference between the provinces and the Dominion as to the extent of their respective legislative jurisdictions with regard to fisheries, which has been referred to the courts for determination, and as the courts would also afford a remedy for any individual who might claim to be injuriously affected by this legislation, the undersigned recommends that the Act be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Quebec, for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,

*Minister of Justice.*



## NOVA SCOTIA—31ST VICTORIA, 1868.

(1ST SESSION—24TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 22nd February, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th February, 1869.

With reference to the Imperial "British North America Act, 1867," and also to the Order in Council of the 9th June, 1868, on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report:—

That he considered the Acts mentioned, chapters 1, 3, 5 to 17, 19, 20, 22 to 36, and 38 to 100, inclusive, passed by the legislature, in the past session thereof, to be free from objection of any kind. He therefore recommends that the same be left to their operation.

With respect to chapter 11, intituled: "An Act to amend chapter 72 of the Revised Statutes of the Commissioners of Sewers, and the regulating of Dyked and Marsh Lands," he recommends that it also be left to its operation.

It may be doubted, however, whether this Act, as it gives to the commissioners appointed, under it powers to be exercised as well *beyond* as *within* the boundaries of Nova Scotia, is not out of the jurisdiction of the provincial legislature.

If the government of Nova Scotia should entertain the same doubt, or should the question as to the validity of the Act be raised, an Act of Parliament of the Dominion could readily be obtained confirming it.

The Statutes, chapters 2, 4, 18, 21, and 37, will be the subject of a further report, as they are still under consideration.

JOHN A. MACDONALD.

*Memo. in re Militia Bill.*

On a despatch of the Lieutenant-Governor of Nova Scotia, dated the 22nd September, 1868, stated that he had assented to certain Bills of the legislature of Nova Scotia, and transmitting a copy of a "Bill relating to the Militia," which had been reserved for the assent of his Excellency the Governor General, the Minister of Justice reported as follows:

"In this case it is quite clear that the legislature of Nova Scotia had no authority or right to pass the Militia Bill within mentioned. Had it passed, I would have recommended its disallowance."

Having been reserved for the assent of the Governor General, it is of course no statute until such assent is given. If there be no assent within a year after its final passage through the legislature, it falls to the ground of itself, and cannot afterwards be assented to,

Under present circumstances I advise that there be no formal refusal, but that the bill be allowed to lapse at the end of the year, 21st September, 1869, without remark.

JOHN A. MACDONALD.

NOTE.—The bill is as follows:—"An Act to amend chapter 16 of the Acts of 1865, intituled: "An Act in reference to the Militia."

Be it enacted by the Governor in Council and Assembly as follows :—

1. It shall not be lawful to march or move the Militia of Nova Scotia beyond the limits of the province, without the approval and consent of the Governor and Council of the province aforesaid.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 20th August, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 12th August, 1869.

With respect to the following Acts passed by the legislature of Nova Scotia, at its first session (31st Victoria), the undersigned has the honour to report as follows :—

31 Vic., chap. 2.—“An Act to amend chapter 120 of the Revised Statutes of the solemnization of marriage, and the registration of marriages, births and deaths, and the Act in amendment thereof.”

This Act amends the 5th section of chap. 28 of the Acts of 1866, and provides that the licenses mentioned in such section shall not be deposited with the Chairman of the Board of Statutes for distribution, but that the same shall be distributed by the Provincial Secretary.

The undersigned is of opinion that this Act is objectionable, as the power of issuing Marriage Licenses is, in his opinion, vested in the Governor General as ordinary, and under the power given him in his Commission.

As this is a question however which may affect the validity of marriages, it must be decided authoritatively, and it is proposed that it should be submitted to the Secretary of State for the Colonies for the purpose of obtaining the opinion of Her Majesty's law officers thereon. Meanwhile, as the Act in question does not allow the previous law, except as to the person who shall distribute licenses, the undersigned does not recommend its disallowance, but suggests that the attention of the government of Nova Scotia be called to the subject.

Chap. 4, intituled : “An Act to amend chap. 137 of the Revised Statutes (of the Relief of Insolvent Debtors).”

The law of Bankruptcy and Insolvency is to be dealt with under the British North America Act, 1867,” by the Parliament of the Dominion of Canada, and therefore the Act in question would seem to be *ultra vires*. As, however, the Act now amended, may be considered more as an Act for the relief of indigent debtors, than a law of Insolvency, and as its main object is to establish a remuneration for the commissioners, the undersigned recommends that it be left to its operation, but that the attention of the government of Nova Scotia be called to it.

A measure of a similar nature was passed in the session of 1868 by the legislature of New Brunswick, and the court there has declared the Act to be unconstitutional. Probably, if the question arises in the courts of Nova Scotia, the same decision will be arrived at.

Chapter 18, intituled : “An Act to amend the Act for the appointment of a Stipendiary Magistrate and Police Constable in the town of Pictou.”

The second clause of the Act is objectionable. The clause is as follows :

“On the trial of all larcenies there shall be on the bench at least three justices of the peace, including the stipendiary justices, and a jury of three disinterested persons shall be sworn to try the prisoner if required by him.”

The provision as to a jury of three disinterested persons is one connected with criminal procedure. By the 27th paragraph of the 91st clause of the “British North America Act, 1867,” it is provided that the Parliament of Canada shall deal with criminal law, except the constitution of the courts of criminal jurisdiction, but including the procedure in criminal matters.

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The undersigned recommends that the attention of the government of Nova Scotia be called to this clause in order to its repeal next session. (*This Act was amended by repealing the second section thereof. See Statutes, N. S., 33rd Vic. chap, 42.*)

It is suggested that it would be well for the government of Nova Scotia meanwhile to call upon the magistracy not to act under that clause, as otherwise, on objection being taken, criminals may be discharged and a failure of justice ensue.

Chap. 21, intituled : "An Act to empower the Police Court in the city of Halifax to sentence Juvenile Offenders to the Halifax Industrial School."

This Act is objectionable inasmuch as it deals with criminal law, which appertains to the Parliament of the Dominion. It is so clearly *ultra vires* as it deals with criminal convictions, sentences and imprisonments, not only in the industrial school mentioned in the Act, but also by the 5th clause, in the city prison, that the undersigned recommends that it be disallowed. *For Proclamation of Governor General's disallowance of this Act, see Canada Gazette of the 29th August, 1869. Vol. III., No. 23, p. 385.*

Chap. 37, intituled : "An Act to amend the Act to incorporate the 'Union Marine Insurance Company of Nova Scotia.'"

After full consideration the undersigned respectfully recommends that this Act be left to its operation.

All of which is respectfully submitted.

JOHN A. MACDONALD



## NOVA SCOTIA—32ND VICTORIA, 1869.

(2ND SESSION—24TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th November, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th November, 1869.

With reference to the Imperial "British North America Act, 1867," and also to the Order in Council of the 9th June, 1868, on the memorandum of the undersigned, relative to the course to be pursued with respect to the acts passed by the provincial legislatures, the undersigned has the honour to report, that, in his opinion, all the acts passed by the legislature of the province of Nova Scotia, in the second session thereof (32nd Victoria) with the exception of chapter eleven, "An Act to amend Cap. 75 of the Revised Statutes 'Of Shipping and Seamen,'" should be left to their operation, and he respectfully recommends accordingly.

The undersigned, while recommending that chapter 12, intituled: "An Act in addition to Chap. 162 of the Revised Statutes, 'Of offences against the Public Peace,'" be left to its operation, feels it his duty to report that he has great doubt whether sections 2 and 3 are not *ultra vires*.

The offences mentioned in those two clauses are *misdeemeanours*. It would seem, therefore, that the Act relates to criminal law, which by the 27th paragraph of section 91 of the "British North America Act, 1867," is subject, exclusively, to legislation of the Dominion Parliament.

He is also inclined to believe that chapter 16, intituled: "An Act to amend Cap. 92 of the Revised Statutes of the preservation of useful Birds and Animals," and the Act in amendment thereof, is beyond the jurisdiction of the provincial legislature, as it affects trade and commerce.

By the second paragraph of the clause above cited, laws for the regulation of trade and commerce are to be dealt with by the Dominion Parliament.

The undersigned recommends that the attention of the government of Nova Scotia be called to these two Acts, and their consideration of the objection taken to them invited.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 9th November, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th November, 1869.

With reference to the following Act passed by the legislature of the province of Nova Scotia at its session (32nd Victoria), the undersigned has the honour to report as follows:

That chapter 11, intituled: "An Act to amend Cap. 75 of the Revised Statutes 'Of Shipping and Seamen,'" is objectionable; as any amendment of that Act can only be passed by the Parliament of the Dominion, which has, by the British North America Act, 1867, exclusive jurisdiction in all legislation relating to trade and commerce, and navigation and shipping.

The attention of the government of Nova Scotia, should be called to this Act; and they should at the same time be requested to state whether they would prefer repealing it at the next session of their legislature, or having it disallowed here. Should the latter course be adopted, the undersigned would recommend that an Act similar in its provisions to the one in question, be submitted to the Parliament of Canada at its next session.

All which is respectfully submitted.

JOHN A. MACDONALD.

NOTE.—The time within which this Act could be disallowed, expired without any disallowance.

## NOVA SCOTIA—33RD VICTORIA, 1870.

(3RD SESSION—24TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 28th September, 1870.*

DEPARTMENT OF JUSTICE, OTTAWA, Sept. 23rd, 1870.

The undersigned has the honour to report that, after full consideration, he is of opinion that the Act (chap. 2) passed by the legislature of the province of Nova Scotia, in the third session thereof (33rd Victoria), intituled: "An Act to improve the administration of justice," should be left to its operation, and he respectfully recommends accordingly.

The undersigned, however, thinks it necessary to call attention to the 8th clause of the Act, which legislates as to the discharge of insolvent debtors. This may, perhaps, infringe on the jurisdiction of the Dominion Parliament in matters of insolvency. The objection, however, is not of sufficient importance to warrant the undersigned in recommending the disallowance of the Act.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 24th October, 1870.*

DEPARTMENT OF JUSTICE, OTTAWA, October 19th, 1870.

With reference to the Imperial "British North America Act, 1867," and also to the Order in Council of the 9th June, 1868, on the memorandum of the undersigned relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report:—

That in his opinion all the Acts passed by the legislature of the province of Nova Scotia in the third session thereof, 33rd Victoria (with the exception of those under-mentioned, which will be the subject of a further report), are free from objection of any kind. He therefore recommends that the same be left to their operation.

The following are the exceptions above alluded to:—

Chapter 6: "An Act to amend chapter 103 of the Revised Statutes, 'Of the conveying of Timber and Lumber on Rivers, and the removal of obstructions therefrom.'"

Chapter 17: "An Act to amend chapter 79 of the Revised Statutes, 'Of Pilotage, Harbours and Harbour Masters.'"

All which is respectfully submitted.

JOHN A. MACDONALD.

NOTE.—The Acts above mentioned, Chaps. 6 and 17, were allowed to go into operation by effluxion of time.

## NOVA SCOTIA—34TH VICTORIA, 1871.

(4TH SESSION—24TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th October, 1871.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th October, 1871.

The undersigned, to whom were referred certified copies of the Acts passed by the legislature of the province of Nova Scotia in the fourth session thereof, held in the thirty-fourth year of Her Majesty's reign, has the honour to report :

That the two undermentioned Acts have been reserved for further consideration and report, viz. :—

Chap. 32 : "An Act to regulate Pilotage in the Bras d'Or Lake, in the Island of Cape Breton.

Chap. 57 : "An Act to incorporate the Nova Scotia Mutual Fire Insurance Company.

That, with the exception of the two last mentioned, the said Acts are within the jurisdiction of the provincial legislature, and he begs respectfully to recommend that the same be left to their operation.

All of which is respectfully submitted.

JOHN A. MACDONALD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th December, 1871.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th December, 1871.

Referring to his previous report of the 17th October last, on the subject of the Acts passed by the legislature of Nova Scotia at the last session, the undersigned has the honour further to report :—

That with reference to the Act, chapter 32, intituled : "An Act to regulate pilotage in the Bras d'Or Lake, in the Island of Cape Breton," he is of opinion that the provincial legislature has no power to regulate the fees of pilots, and that such can only be done by Act of the Dominion government. He therefore recommends that this Act be disallowed. (*For proclamation of disallowance of this Act, see "Canada Gazette" of 23rd December, 1871. Vol. V., No. 26, p. 599.*)

With respect to chapter 57, intituled : "An Act to incorporate the Nova Scotia Mutual Fire Insurance Company," the undersigned is of opinion that the 14th section is unconstitutional, in so far as it declares that the president and directors of the company incorporated by the Act shall, for certain acts therein stated, be deemed guilty of misdemeanour.

This is a matter relating to the Criminal Law, which can only be dealt with by the Parliament of Canada. (*Amended by cap. 99, 35th Victoria.*)

The attention of the government of Nova Scotia should be called to this clause, so that it may be amended at the ensuing session of the legislature of that province.

All of which is respectfully submitted.

JOHN A. MACDONALD.



## NOVA SCOTIA—35TH VICTORIA, 1872.

(1ST SESSION—25TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th March, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st March, 1873.

The undersigned, to whom was referred a certified copy of the statutes passed by the legislature of Nova Scotia in the last session thereof (35th Victoria, 1872), has the honour to report :—

That after a careful examination of the said statutes, he is of opinion that the same are unobjectionable. He, therefore, recommends that they be left to their operation.

JOHN A. MACDONALD.

## NOVA SCOTIA—36TH VICTORIA, 1873.

(2ND SESSION—25TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th September, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd September, 1874.

The undersigned, to whom was referred a certified copy of the statutes passed by the legislature of Nova Scotia, in the session 36 Victoria, 1873, has the honour to report, that after a careful examination of the undermentioned statutes, he is of opinion that the same are unobjectionable, and he, therefore, recommends that they be left to their operation :—

Chapters 1 to 37, inclusive, and 41 to 95 inclusive.

With reference to the statutes not included in the above list, the undersigned has the honour to report as follows :—

Chapter 38.—“An Act to incorporate the Whitehaven, New Glasgow and North Shore Railway.”

Section 6.—This section appears to give power to the railway company for purchasing and holding within and without the province, lands, buildings, &c., and all appurtenances of a railway, and to make such connections as they think proper with other railways and steamboat proprietors and companies, within and without the province, &c.

How far it may be wise to give such general powers to a railway company to be exercised within the province may be questioned, but they would appear to be not beyond the jurisdiction of a local legislature; but the giving of the same powers to be exercised without the province is, in the opinion of the undersigned, clearly in excess of the jurisdiction of a local government, and it is in fact legislation upon works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province, contrary to section 92, subsection 10, of the British North America Act 1867, and the undersigned suggests that the government of Nova Scotia should be requested to repeal the same.

Section 9 gives the company power to construct their railway over and across any river, brook or stream.

This is also objectionable, in so far as it does not except the navigable waters, from the operations of the section.

In the Parliament of Canada, when Acts are passed of a similar nature to the present one, great care is taken to provide that the crossing of any navigable waters shall only be permitted by the Governor in Council, and after approval by him of the plans for such work.

The undersigned recommends that the government of Nova Scotia should be requested to amend this section.

Chapter 39.—“An Act to incorporate the Sydney and East Bay Railway Company.” Sections 9 and 12.—The remarks made as to the preceding Act, also apply to this one. Section 10.—The effect of this section should be limited to railways within the province. Chapter 40.—“An Act to incorporate the Nictaux and Atlantic Railway Company.” Section 8, 11, 14.—The remarks made on chapter 38 are applicable to this one.

T. FOURNIER,  
*Minister of Justice.*

## NOVA SCOTIA—37TH VICTORIA, 1874.

(3RD SESSION—25TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th December, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th December, 1874.

The undersigned, to whom was referred a certified copy of the statutes passed by the legislature of the province of Nova Scotia, in the session 37th Victoria, 1874, has the honour to report, that after a careful examination of the undermentioned statutes, he is of opinion that the same are unobjectionable, and he therefore recommends that they be left to their operation.

Chapters 1 to 13 inclusive 16, 17, 19, to 50 inclusive, 61, 64 to 67, 70 to 73, 75 to 81, 84 to 103 inclusive.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur in the above report.

T. FOURNIER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th December, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th December, 1874.

The undersigned has the honour to report, that an Act was passed by the legislature of Nova Scotia, in the session 37th Victoria, 1874, being chaptered 74, and intituled: "An Act to incorporate the Halifax Company, Limited."

The objects of this company are very extended, but except as after mentioned, do not, on the face of them, appear to contemplate business out of the province; but the undersigned is of opinion that attention must be given to sec. 1, subsec. 7, which gives power to the company to acquire \* \* any steam or other ships, barges or vessels for the purpose of conveying goods, whether belonging to the company or not, or of conveying persons, and between any places whatever, and maintaining and running the same.

Also subsec. 9.—Confers powers on them to acquire \* \* for or in any connection with all of or any of the purposes hereby authorized, any buildings, plants, machinery, stock in trade, goods, chattels, or effects in any parts of the world.

Subsec. 10.—"To acquire by grant, purchase, license or otherwise, any patents, *brevets d'invention*, patent rights or copyrights, which may be desirable for the purposes of the company."

Subsec. 15.—"To procure the company to be constituted or incorporated as a corporation or anonymous society in any colony or foreign country."

Subsec. 16.—"To procure, obtain, accept, and observe the terms and conditions of any decrees, concessions, powers or privileges made or granted now or hereafter by any government or other authorities."



Subsec. 17.—“To purchase, take over and adopt all or any part of the good-will, assets and liabilities of any other company or person carrying on all or any branches of the business mentioned herein, and to buy, hold or sell any of the shares of the same company, and to liquidate and wind up its business and affairs.”

Subsec. 18.—“To make and carry into effect, any arrangements with respect to the union of interests or amalgamation with any other company, corporation or person carrying on any business similar to that of this company, &c.”

Sec. 6.—Also gives power to the “company to make and construct any roads, railroads, &c., \* \* \* over, under and across any road, railroad, tramroad, or river, brook or stream,” without any reference to the rights of navigation.

Whilst these rights cannot be affected by any local legislation, it would seem advisable that in such cases as the present, some mention should be made of them.

As to the Act itself, and the points previously alluded to, it appears by section 7 that “the Halifax Company, Limited, is a company incorporated in England under the Imperial Acts, ‘The Companies Act, 1862,’ and ‘The Companies Act, 1867.’”

When the powers conferred by the Act are taken together, and in connection, especially, with the subsections which have been alluded to, it appears obvious that the incorporation of the company is for objects beyond the powers and control of a local legislature. It cannot be said that it is for purely local works or undertakings, nor is it an incorporation of a company with provincial objects, or of a merely local or private nature in the province.

The undersigned, therefore, recommends that the Act in question should be disallowed.

I concur.

T. FOURNIER,

*Minister of Justice.*

H. BERNARD,  
*Deputy Minister of Justice.*

*Proclamation disallowing the above mentioned Act, published in the Canada Gazette, on the 12th December, 1874. Vol. VIII., No. 25, p. 661.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th December, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th December, 1874.

Upon the undermentioned Act, passed by the legislature of Nova Scotia, 1874, the undersigned has the honour to report “An Act to incorporate the Anglo-French Steamship Company.”

This Act proposes to incorporate certain persons under the above name, for the purpose of running a steamer or steamers to and from ports in Nova Scotia, the island of St. Pierre Miquelon, and Newfoundland.

On the face of this Act it is shown to be for a line of steamships extending beyond the limits of the province, and being between the province and a British, as also a foreign country, it obviously, therefore, comes within one of the classes mentioned in the British North America Act, section 92, subsection 10, clauses *a* and *b*.

The undersigned has the honour to advise that this Act is not within the competence of a provincial legislature, and to recommend therefore that this Act be disallowed by your Excellency.

I concur.

T. FOURNIER,

*Minister of Justice.*

H. BERNARD,  
*Deputy Minister of Justice.*

*Proclamation disallowing the above mentioned Act, published in the Canada Gazette on the 12th day of December, 1874. Vol. VIII., No. 25, p. 661.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th December, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 7th December, 1874.

Upon the undermentioned Acts of the legislature of the province of Nova Scotia, passed in the 37th Victoria, 1874, the undersigned has the honour to report as follows :—  
Chapter 18.—“An Act to establish County Courts.”

By section 3 it is provided that one judge shall be appointed for each county court district, and further, that “every such judge shall be a barrister of the Supreme Court of this province of not less than seven years’ standing.”

In respect to this latter limitation, the undersigned thinks it well to refer to the “British North America Act, 1867,” section 97, by which the only limit to the discretion of the Governor General in selecting such judges from the several provinces, is that they shall be selected from the bars of those provinces.

The undersigned does not desire to express any definite opinion whether, having reference to the Imperial statute, it is within the power of a local legislature to pass the clause above alluded to.

He suggests the subject to the consideration of the government of Nova Scotia, and recommends that the Act be left to its operation.

Chapter 62.—“An Act to incorporate the Eastern Counties Railway Company.”

Section 10.—Authorizes the company to purchase and hold, within or without the province, lands, houses and materials, &c., to make such connections as they may think proper with other railway or steamboat companies, within or without the province, either by leasing their road to other corporations, &c., or by consolidating the stock of their railroad with that of any other railway companies, &c. This provision seems to be beyond the power of the legislature of Nova Scotia, which in this respect is confined by section 92, subsection 10, to local work and undertaking, except lines of steamships, railways, &c., connecting the province with any other or others of the provinces, or extending beyond the limits of the province.

Nor does it seem to be under the terms laid down in subsection 11 of that section ; the “incorporation of companies with provincial objects.”

It is suggested that this clause be repealed, and their powers limited.

Section 13 empowers the company to construct its railroad over, under and across any harbour, cove, brook or stream.

This clause is one of frequent occurrence in private Acts, and it appears desirable in all cases to make a direct reservation regarding navigation and its rights as reserved to the Parliament of Canada.

It is true that the absence of any reference to navigation cannot prejudice the powers of the Parliament of Canada, or the action of the government of Canada in respect to the same, but it is suggested that parties would be more thoroughly cognizant of their position in such respect, if direct reference were made to the rights of navigation.

Chap. 63.—“An Act to incorporate the Inverness Railway Company,” sec. 14.

Chap. 68.—“An Act to incorporate the Styles Mining Company, Limited,” sec. 10.

Chap. 69.—“An Act relating to the General Mining Association, Limited,” sec. 2.

The remarks made in reference to navigation apply also to these sections.

The undersigned recommends, however, that the Acts be left to their operation, the subject being brought under the notice of the government of Nova Scotia, with the reference to these clauses and further legislation on these subjects.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur.

T. FOURNIER,  
*Minister of Justice.*

*Lieutenant-Governor Archibald to the Secretary of State of Canada.*

GOVERNMENT HOUSE, HALIFAX, NOVA SCOTIA, 24th July, 1874.

SIR,—I have the honour to inclose a certified copy of a bill entitled: "An Act to facilitate arrangements between Railway Companies and their Creditors," which was presented to me at the close of the last session of the legislature of this province, but to which I did not accord my assent, reserving it for the signification of the pleasure of his Excellency the Governor General. My reason for reserving the bill was, that I considered the subject not within the jurisdiction of the local legislature.

The Union Act commits to parliament, legislation on subjects of bankruptcy and insolvency.

This Act seems to encroach upon the domain of Parliament. It proposes to facilitate arrangements between certain companies and their creditors; it is confined, it is true, to companies constituted by Acts of the provincial legislature, and may have proceeded on the idea that the companies, being of local jurisdiction, the insolvency of such companies might be dealt with by the local legislature; but this interpretation of the Act could hardly be considered gravely.

It may be said that the operation of the Act is not necessarily confined to insolvent companies—that it may well apply to companies embarrassed, but able to pay in full, if time is allowed.

But the Bankruptcy and Insolvency Acts are not confined to the estates unable to pay. It is sufficient that the parties are unable to meet existing engagements, and then this should be testified in certain modes prescribed by the Bankruptcy Acts. The question of eventual inability to pay is quite another matter.

This Act undertakes to deal with the rights of creditors, to prevent them from enforcing their claims; in effect, it seems to me to repeal the provisions of the law of bankruptcy or insolvency, so far as regards the class of companies specified in it.

Under these circumstances, I thought it my duty to leave the matter for the consideration of his Excellency the Governor General, for such action thereon as he may think fit to adopt.

May I request you will have the goodness to bring the matter to the early notice of his Excellency.

I have, &c.,

ADAMS G. ARCHIBALD,

*Lieutenant-Governor.*

*Memorial of the Windsor and Annapolis Railway Company.*

*To His Excellency the Governor General of the Dominion of Canada, in Council:*

The memorial of the Windsor and Annapolis Railway Company (Limited), humbly sheweth:

That your memorialists are a company composed for the most part of capitalists resident in Great Britain, registered in England on the 1st of March, 1867, as a "Limited" Company, under an Act of the Imperial Parliament, entitled: "The Companies' Act, 1862," and incorporated by an Act of the legislature of Nova Scotia (30 Vic., chap. 36) on the 7th of May, 1867.

The object for which your memorialists were incorporated was the construction and working of a portion of one of the sections of the government railways of the province of Nova Scotia, extending from Windsor to Annapolis, a distance of eighty-five miles.



The capital embarked by your capitalists amounts to £300,000, in fifteen thousand shares of £20 each. Your memorialists have, as provided by their articles of association, also raised the further sum of £200,000 by the issue of terminable debentures carrying interest at the rate of six per cent per annum.

Your memorialists having completed the construction of the line of railway, have now operated it, with the utmost energy and regularity, for more than five years; but all their efforts have hitherto failed to derive a return on their invested capital, the income from the road after payment of expenses not even sufficing to meet any part of the interest upon the debenture debt.

Your memorialists, however, have, with continued regularity, paid this interest to the holders of their debentures, having necessarily to provide the funds therefor by borrowing, and the capital requirements of the road having been met in a similar manner, your memorialists have, up to the present time, increased floating debts to the amount of £100,000.

It would, therefore, appear that the circumstances of the company are such as to necessitate an increase of capital, and their articles of association giving them power to negotiate such increase, your memorialists last year proposed a scheme to their bondholders by means of which a further sum of £190,000 might be raised on mortgages, to rank equal with those already existing, and over four fifths of the parties interested acquiesced in the said scheme.

But owing to the objection of a few remaining bondholders, your memorialists were unable to carry out this scheme, and the interest of the whole of the capitalists connected with the undertaking were thereby endangered.

In order, therefore, to protect the interests of the great majority of debenture holders, and that the ill-advised hostility of a few, might not be permitted to hamper the well-considered plans of your memorialists for the benefit of the line, a bill was introduced into the Honourable the House of Assembly of Nova Scotia, entitled: "An Act to facilitate arrangements between Railway Companies and their creditors," the intention of which was to prevent any small number of creditors from exercising the power of selling or otherwise acting towards your memorialists' property, in a way likely to affect the continued running of the road. This bill was twice passed by the Honourable the House of Assembly in their sessions in 1872 and 1873 respectively; in both instances, however, it was too late to pass the legislative council.

At the last session the bill being again introduced, was unanimously passed by both Honourable Houses.

His Honour the Lieutenant-Governor, however, reserved the Act for the consideration of your Excellency in Council.

It has come to the knowledge of your memorialists that a few gentlemen, in Halifax, holding bonds to the extent of some seven thousand five hundred pounds sterling, have thought fit to petition your Excellency to withhold your assent to their bill, on the grounds that it will materially affect a prior lien upon the property, which they claim to hold, to the exclusion of other bonds of the same class, and compel them, at the instance of other creditors of the company, to compromise their just claims.

It is further stated in the said petition that the petitioners would have opposed the passage of the Act, had they been aware of its introduction into the House of Assembly, and also that it was hurried through the legislative council before they were enabled to signify their objections to it.

Your memorialists regret to observe that there is considerable error in their statements, since the bill was introduced on the 24th March; read second time and referred to Committee on Law Amendments, 26th March; reported from this committee, and committed, 9th April; passed in committee and ordered to be engrossed, 5th May; read a third time and sent to legislative council, 5th May; every stage of these proceedings being duly reported in the newspapers.

Also, upon its being sent to the legislative council, opposition was made thereto by the gentlemen signing the abovementioned petition, and, in consequence, the Bill

was referred to a committee of the council, the Hon. Mr. Creighton being Chairman, who summoned representatives of those gentlemen and of your memorialists to appear before them.

Accordingly, on the 6th of May, Dr. Lewis, of Halifax, appearing for certain of the objecting parties, was heard before the said committee, who also examined your memorialists' commissioner, and the said committee reporting in favour of the Bill, with certain amendments, it was passed in the council, returned to the House of Assembly, and finally passed on the 7th of May.

Your memorialists claim that the passing of the bill will be no injustice to the opposing parties, nor to any of the company's creditors, since it provides that any scheme of arrangement must be assented to in writing by three-fourths of the class of creditors affected by its proposals, and that, should any refuse their assent, they may be heard before a judge of the Supreme Court, who, upon considering their objections valid, may disallow the proposed scheme.

Your memorialists contend that such an Act is indispensable to any railway company in monetary difficulties, and, in consequence, similar Acts have been placed upon the Statute-Books of Great Britain and most of the provinces of the Dominion of Canada.

Should this bill be disallowed, your memorialists will be debarred from all power of developing their property, or even from saving it from annihilation, and thereby not only will their invested capital be jeopardized and an injury done to their creditors, but a great and manifest harm will occur to the province of Nova Scotia.

Your memorialists, therefore, in all humility beg that your Excellency may be pleased to signify your assent to the Act.

And your memorialists, as in duty bound, will ever pray, &c.

The Windsor and Annapolis Railway Company (Limited) by their lawfully appointed commissioner,

ELIAS A. DEPASS.

OTTAWA, 1st December, 1874.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th December, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th December, 1874.

The undersigned has the honour to report, that in the session of the legislature of the province of Nova Scotia held in May last, a bill was passed, intituled: "An Act to facilitate arrangements between Railway Companies and their creditors," which was reserved, by the Lieutenant-Governor, for the signification of the pleasure of your Excellency thereon.

The Lieut.-Governor reports that his reason for reserving the bill was that he considered the subject not within the jurisdiction of the local legislature, and that it seemed to entrench upon the domain of Parliament, as being within the subjects of "Insolvency and Bankruptcy."

The Lieut.-Governor says, that the operation of the "Act is not necessarily confined to insolvent companies embarrassed, but able to pay in full, if time is allowed, but the Bankruptcy and Insolvency Acts are not confined to the estates unable to pay. It is sufficient that the parties are unable to meet existing engagements, and that it should be testified in certain modes prescribed by the Bankruptcy Acts. The question of eventual inability to pay is quite another matter.

He states that "the Act undertakes to deal with the rights of creditors, to prevent them from enforcing their claims, in effect to repeal the provisions of the law of bankruptcy and insolvency, so far as regards the classes of companies specified in it."



2. A petition is submitted against the royal assent to this bill, signed by five residents of Halifax, who state that, although no direct reference is made in the Act itself, to the Windsor and Annapolis Railway Company, yet that it was introduced at the instance of that company and for the sole purpose of enabling the directors to compromise with its creditors, and that its provisions materially affect the interests of the memorialists who hold mortgage debentures or bonds to the extent of £7,500 sterling of the Windsor and Annapolis Railway Company. That the said bonds have been registered in the different counties, and under the laws of Nova Scotia have become liens on the property, according to the dates of their registry, to the exclusion of other bonds of the same class not registered at all, or registered subsequently."

That if the Act should be assented to, they are afraid that they would be prevented from recovering the amount justly due them by the Windsor and Annapolis Railway Company, and be compelled, at the instance of the company and its creditors, who are not secured to the same extent as they are, to compromise their claims and give up their security. That they had intended to have appeared before the Committee of the House of Assembly and oppose the passage of the Act, but that none of them were aware that the same had been introduced until it had passed through the House on the 5th May last, and that as it was hurried through the council on the morning of the 7th May, the same day on which the legislature was prorogued, they were unable to oppose its passage.

That if the Act becomes law, great injustice will be done to them, and they pray for its disallowance, so that they may have an opportunity, in case the Act is again introduced into the local legislature, of being fully heard before a committee in the House.

In the letter transmitting this petition, the writer states that the bill would have been defeated in the legislative council, but for an intimation of Dr. Parker that the rights of bondholders would not be affected.

3. The Windsor and Annapolis Railway Company (Limited), presents a petition in favour of the passage of the Act, stating that they are a company incorporated in England, under the "Joint Stock Companies Act." for the construction and working of a portion of one of the sections of the government railways, from Windsor to Annapolis, being eighty-five miles.

That the capital embarked is £300,000 sterling, with further sum of £200,000 sterling by the issue of terminable debentures at 6 per cent interest per annum.

They allege that they have completed the construction of the line, and have operated it for five years, but unsuccessfully; and that they have paid interest to the debenture-holders, and have thereby incurred a floating debt to the amount of £100,000.

That the company require an increase of capital, and their articles of association permit such increase. That they proposed a scheme to the bondholders by means of which a further sum of £100,000 might be raised on mortgages to rank equally with those already existing; and that over four-fifths of the parties interested acquiesced in the scheme, but that the few remaining bondholders objected, and the scheme fell to the ground.

That to meet this difficulty the bill in question was passed; the intention being to prevent any smaller number of creditors from exercising the power of selling or otherwise acting in a way likely to affect the continued running of the road; and that the bill was twice passed in the House of Assembly in their sessions of 1872-73, but in both instances, too late to pass the legislative council.

With reference to the allegations in the petition against the bill, as to the same having been hurried through the legislature, they state that the bill was introduced on the 24th March, passed the committee with amendments thereto, and did not pass the Assembly until the 5th May; and that in respect to the Council, the representatives of the gentlemen who petitioned against the same were summoned, and appeared before them.



They allege that the passage of the bill will be no injustice to the opposing parties or to any of the company's creditors, since it provides that any scheme of arrangement must be assented to by three-fourths of the class of creditors affected by it, and by other provisions.

They contend that such an Act is indispensable to any railway company in monetary difficulties, and that, if disallowed, the company would be debarred from all power of developing their property, or even from saving it from annihilation, and an injury would be done to the creditors.

4. The bill itself provides that a company may propose a scheme of arrangement between itself and their creditors, with or without provisions for settling, and defining any rights of shareholders as among themselves, and for raising, if necessary, additional share and loan capital, and may file the same in the Supreme Court, upon which the latter may, on the application of the company, in a summary way, restrain any action against the company on such terms as the court thinks fit. Notice of the filing of the scheme is to be published, after which no execution or process against the company shall be available, without leave of the court.

The scheme is to be deemed to be assented to by the creditors when assented to in writing by three-fourths in value, and by the preference shareholders by three-fourths in value of each class, and by the ordinary shareholders when assented to at an extraordinary general meeting, specially called for that purpose; but the assent to the scheme of any class of encumbrances or shareholders is not to be requisite, if the scheme does not prejudicially affect any right or interest of such class.

If the directors thereupon consider the scheme to be assented to, they may apply to the court by petition for confirmation, and the court, if satisfied that the scheme has been assented to, and that no sufficient objection has been established, may confirm it, whereupon it shall be enrolled in the court and binding on all parties.

5. It is under the foregoing circumstances that the bill requires either your Excellency's assent or disallowance.

It may be mentioned, in the first place, that the Act is by its terms specially limited to any railway company constituted by any Act of the legislature of Nova Scotia; and, further, that it does not conflict with any law of Canada relating to bankruptcy or insolvency.

The Insolvent Act of Canada, 1869, does not extend to incorporated companies, and to reach such matter as the present, it would be requisite that legislation should, if necessary, be had.

As to the necessity for legislation of such a kind as the present, or of its nature, there can be no doubt that it frequently exists, and in England provision is made frequently for the winding up of companies, or for enabling them to come to terms with the various classes of creditors on fresh provisions and arrangements, which shall enable a concern to be carried on.

The same legislation has, on various occasions, been passed by the parliament of Canada—not, indeed, to the extent of winding up, but as to re-arrangements of its shares and debenture indebtedness. In so doing it is obvious that private interests must be more or less affected, and it is, therefore, left to a majority or larger proportion of the parties interested to decide whether the scheme should be accepted by them or not.

In reference, therefore, to the allegations made by the petitioners against the bill, and as it appears for nearly six weeks after its introduction into the legislative assembly, the petitioners had the power of taking steps to represent their interests before the legislative assembly of Nova Scotia, and as the same passed the committee of both Houses and was amended in both, the undersigned is of the opinion that no reason exists on these grounds for withholding your Excellency's assent.

6. The point, therefore, for consideration, and which is one of some importance, is that raised by the Lieutenant-Governor, namely, that the Act deals with a subject not

within the jurisdiction of a local legislature, inasmuch as it deals with "bankruptcy and insolvency" which are, by the British North America Act, 1867, reserved to the parliament of Canada alone.

Upon this point the undersigned refers to the judgment of the Judicial Committee of the Privy Council on the appeal of *L'Union St. Jacques de Montréal v. Dame Julie Belisle*, on appeal from the Court of Queen's Bench for the province of Quebec, Canada (appeal side) delivered 8th July, 1874.\*

In that case an Act was passed by the legislature of the province of Quebec, in reference to the Society of *L'Union St. Jacques de Montréal*, imposing a forced commutation of the existing rights of two widows, who at the time when that Act was passed, were annuitants of the society under the rules.

The reason for that Act was, by its recitals, stated to be that the resources of the society had been considerably reduced, and encroachments made on its savings and the balancing of receipts and expenses prevented, and that two out of four widows of deceased members had agreed to allow their weekly and life benefits to be lessened, but that the other two refused so to do, and that it had been shown that the financial condition of the association did not permit of its continuing to pay to the two widows their previous pensions without entailing its own ruin.

The Judicial Committee of the Privy Council said: "Clearly this matter is private, clearly it is local, so far as locality is to be considered, because it is in the province, and in the city of Montreal, and unless, therefore, the general effect of that head of section 92 is for this purpose qualified by something in section 91, it is a matter not only within the competency, but within the exclusive competency, of the provincial legislature."

The question then was whether it was a matter coming under bankruptcy and insolvency, and the view taken by their Lordships in this respect is set out.

They further add that no general law, in respect to bankruptcy and insolvency, covering particular associations, or the society in question, is alleged ever to have been passed by the Dominion, and they add these words:—

"The fact that this particular society appears, upon the face of the provincial Act, to have been in a state of embarrassment, and in such a financial condition that, unless relieved by legislation, it might have been likely to come to ruin, does not prove that it was in any legal sense within the category of insolvency, and in point of fact, the whole tendency of the Act is to keep it out of that category, and not to bring it into it. The Act does not terminate the company; it does not propose a final distribution of its assets on a footing of insolvency or bankruptcy; it does not wind it up.

"On the contrary, it contemplates it going on, and possibly at some future time recovering its prosperity, and then these creditors, who seem on the face of the Act to be somewhat summarily interfered with, are to be re-instated.

"Their Lordships are clearly of the opinion that this is not an Act relating to bankruptcy and insolvency."

The undersigned is of the opinion that the present reserved bill of Nova Scotia, comes within the argument taken by their Lordships in the case of the Quebec Act. Although in the Nova Scotia bill, no particular company is named, yet it applies to any railway company within the legislative competence of that legislature, in a state of embarrassment, and in such a financial condition that, unless relieved by legislation, it may be likely to come to ruin.

In point of fact, indeed, as was observed by their Lordships, the whole tendency of the bill of Nova Scotia is to keep it out of that category, and not to bring it into it. The bill does not terminate the company; it does not propose a final distribution of its assets on the footing of insolvency or bankruptcy; it does not wind it up.

On the contrary, its object is to ensure its going on and recovering its prosperity.

The Act itself seems very reasonable. It propounds a scheme to be filed in the Supreme Court, and which from beginning to end, is to be under the protection of the court, and before which any sufficient objection may be heard.

\*See 8 L. R. P. C. App. side, p. 31.



The interests of creditors of preference shareholders, and of ordinary shareholders, are all protected; the two former by votes of three fourths in value, and as to the latter, at an extraordinary general meeting.

The confirmation of the scheme depends upon the judgment of the court, who have the power of hearing the directors and creditors, shareholders or other parties whom the court thinks entitled to be heard on the application.

Simple as it is, the details appear calculated to effect the desired objects.

It appears to provide full machinery for enabling any company, temporarily embarrassed, to provide means for continuing their operations and business.

6. Under all these circumstances, the undersigned recommends that your Excellency should assent to the said bill.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur.

T. FOURNIER,  
*Minister of Justice.*

*Note.—Proclamation giving assent to the above mentioned Act, published in the Canada Gazette, on the 12th day of December, 1874. Vol. VIII., No. 25, p. 659.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 31st March, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th March, 1875.

Upon the undermentioned Act, passed by the legislature of the province of Nova Scotia, in the year 1874, the undersigned has the honour to report :—

Chapter 82.—“An Act to incorporate the Eastern Steamship Company.” This Act purports to incorporate certain persons under the above name, for the purpose of running steamers on the coast of this province, and elsewhere.

There is no limit therefore to its operation within the province of Nova Scotia; on the contrary, it speaks of “elsewhere.”

The undersigned is of opinion, therefore, that the company comes within one of the clauses mentioned in the British North America Act, 1867, section 92, subsection 10, clause A.

The undersigned has the honour, therefore, to advise that this Act is not within the competence of a local legislature, and would recommend that this Act be disallowed by your Excellency.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur,

T. FOURNIER,  
*Minister of Justice.*

*Note.—Proclamation disallowing the above mentioned Act, published in the Canada Gazette, on the 31st day of March, 1875. Vol. VIII., No. 40, p. 1189.*



*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 26th October, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th October, 1875.

With reference to the Act (Chap. 18), of the Nova Scotia Legislature to establish County Courts, passed on the 7th May, 1874, the undersigned begs to report that by the 27th section of that Act, the summary jurisdiction of the Supreme Court of Nova Scotia is abolished; by the 53rd section the jurisdiction of the City Court of the city of Halifax in all cases of torts, and for forcible entry and detainer is abolished: and transferred to the County Court for District No. 1; by the 50th section so much of the existing law as is inconsistent with the Act is repealed; and by the 57th section it is provided that the Act shall not go into operation, until brought into force by proclamation of the Lieutenant-Governor in Council. During last session of the Canadian Parliament a bill was brought in by the government to provide for the salaries of the judges to be appointed under this statute, but it was defeated in the Senate. The Nova Scotia Act has not yet been proclaimed, but the undersigned is led to believe that the question of bringing it into force immediately, is under consideration. There are very grave difficulties in the way of appointing judges, before parliamentary provision is made for their salaries, and it is obviously the most satisfactory disposition of the matter, to postpone bringing the Act into operation until after the next session of the Canadian Parliament, when it is to be expected this provision will be made. On the other hand, should the Act not be proclaimed earlier, and if the judges are not appointed, it seems probable that there will be a failure of justice in many cases, owing to the abolition of the summary jurisdiction of the Supreme Court, and the non-erection of the substituted county courts.

The undersigned suggests that it would be advisable to communicate with the Lieutenant-Governor of Nova Scotia suggesting the expediency, under the circumstances of postponing until after next session, the proclamation of the Act.

EDWARD BLAKE.

*Report of the Honourable the Minister of Justice.\**

DEPARTMENT OF JUSTICE, OTTAWA, 25th March, 1875.

Upon the undermentioned Acts passed by the legislature of the province of Nova Scotia in the year 1874, the undersigned has the honour to report:—

Chapter 14.—“An Act to amend the Chapter of the Revised Statutes ‘Of Licenses for the sale of intoxicating Liquors.’”

Chapter 15.—“An Act to prevent the sale of intoxicating liquors at camp meetings.”

These Acts purport to restrain and prohibit, under certain circumstances, the sale of intoxicating liquors.

However desirable the objects sought to be attained may be, the undersigned suggests for the consideration of the Lieutenant-Governor of the province of Nova Scotia, whether the same may not be in restraint of trade.

The undersigned recommends that your Excellency do not exercise the right of disallowance in respect of these two Acts, but that the above suggestion be made to the Lieutenant-Governor.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur.

T. FOURNIER,  
*Minister of Justice.*

\*NOTE.—No Order in Council appears to have been passed upon the above report.

## NOVA SCOTIA—38TH VICTORIA, 1875.

(1ST SESSION, 26TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th September, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th September, 1876.

With reference to the Acts passed by the legislature of Nova Scotia, in the first session of the 26th assembly, 38 Vic., 1875, the undersigned begs to recommend that the power of disallowance be not exercised as to the following Acts :—

1 to 24 inclusive, 26 to 28 inclusive, 30 to 65 inclusive, 67 to 74 inclusive, 80 to 88 inclusive, 93 to 116 inclusive.

With reference to chapter 25, intituled : “ An Act for amending the law relating to election petitions, and for providing more effectually for the prevention of corrupt practices at elections,” the 74th section enacts that no answer given by any person claiming to be excused on the ground of privilege, or on the ground that such answer will tend to criminate himself, shall be allowed in any criminal proceeding against such person, other than an indictment for perjury, if the judge gives a certificate.

This provision would be *ultra vires* with respect, at any rate, to any criminal proceedings taken under the law of Canada. Nevertheless, the undersigned, while recommending that the attention of the Lieutenant-Governor should be called to this objection, with a view to considering the propriety of proposing an amendment, does not recommend that the power of disallowance should be exercised.

With reference to chapter 29, intituled : “ An Act to continue the Acts of Incorporation of Wharf, Pier, and Breakwater Companies,” this Act provides that all Acts of incorporation of Wharf, Pier, or Breakwater Companies, whether temporary or perpetual, heretofore passed by the legislature of Nova Scotia, and now in force, are hereby continued and made and declared perpetual. The 3rd section provides, “ that nothing herein shall be construed to contravene or conflict with the British North America Act, 1867, or with any legislation (*intra vires*) of the parliament of Canada.” This Act does not appear free from objection. Presumably, some of the Wharf, Pier, and Breakwater Companies, whose charters were in force at the time of its passing, had been given powers which could not be continued by the legislature of Nova Scotia, and could be dealt with only by the parliament of Canada. However, to the extent to which the first section of the Act might appear to continue such powers, it is of course void, and considering this in connection with the character of these companies, and with the third section limiting the construction of the Act, and preventing the Act from being construed, so as to conflict with the British North America Act or any legislation of the parliament of Canada, it is not likely that much confusion or embarrassment may result from the Act being left to its operation. The undersigned, upon the whole, while recommending that the attention of the Lieutenant-Governor of Nova Scotia should be called to the difficulty, does not recommend that the power of disallowance should be exercised.

With reference to chapter 66, “ An Act to incorporate the Louisburg Extension Railway Company,” the 11th section gives power to the company to construct a railway over, under and across any harbour, &c. The 18th section provides that nothing in the Act contained shall be construed to authorize or empower the company to interrupt, hinder or prevent the navigation of any navigable river or other navigable water. It is possible that this exception is not quite as wide as it ought to be, having regard to the rights in respect of public harbours which are vested in



Canada, but the Act will of course be inoperative to give powers to interfere with these rights, and upon the whole the undersigned does not recommend that it should be disallowed.

Chapter 75. "An Act to incorporate the Protheroe Coal and Railway Company." The 12th section is open to observations such as those which have been made with reference to chapter 66; but the proviso in the 16th section is the same as the restrictive clause in that Act, and the undersigned does not recommend the disallowance of the statute.

Chapter 76. "An Act to incorporate the Globe Marine Insurance Company." By the 11th section of this Act "the company may, at their office in Halifax, commence and conduct the business of marine insurance on steamships, sailing vessels and freights only, and may transact the business of a marine insurance broker, insurer or underwriter."

Chapter 77. "An Act to continue and amend the Acts relating to the Nova Scotia Marine Insurance Company."

By this Act, the original Act of incorporation, being chapter 20 of the Acts of 1837, as amended, is continued and made perpetual. The original Act, which is to be found at p. 235 of the Private and Local Acts of Nova Scotia, appears to have been passed in the year 1835, and, by the 20th section, the company is authorized to "commence and carry on, in their office in Halifax, or elsewhere in this province, the business and operations of marine insurance, in all its branches, and shall and may receive and accept orders, directions and proposals for insurance, and make insurance upon all ships and vessels whatsoever, in port or at sea, or for or upon any voyage or adventures whatsoever, and for and upon all goods, merchandise, property and effects whatsoever; and all money, coins, bullion or other valuable things whatsoever in and upon any such ship, laden or to be laden, and in and upon the freight of goods or merchandise carried or to be carried upon any ship or vessel, or on any voyage whatsoever; and also upon moneys lent or advanced upon bottomry or respondentia, and upon expected profits and commissions or adventures by sea, and upon all subjects of marine insurance whatsoever; and the same shall and may insure against all losses, perils and dangers whatsoever of the seas, fire, enemies, thieves and other risks of the seas and navigation usually insured against by underwriters, and either for or during the respective voyage, or any time or times whatsoever."

These powers do not appear to be limited by any of the amending Acts.

Chapter 78.—"An Act to incorporate the Maitland Marine Insurance Company."

By the 11th section of this Act, the directors of the company "may, at their office in Maitland, commence and conduct the business of marine insurance in all its branches, and may make insurance upon all subjects of marine insurance whatsoever, and may transact all matters relating to the business of a marine insurance broker, insurer or underwriter."

Chapter 79.—"An Act relating to the Union Marine Insurance Company of Nova Scotia."

By this Act, the Act incorporating this company, as altered and amended, is continued in force for twenty years. The Act of incorporation was passed on the 20th March, 1838, and is to be found at page 253 of the private and local Acts of Nova Scotia. By the 21st section the company may "commence and carry on in their office in Halifax, or elsewhere in this province, the business and operations of marine insurance in all its branches, and shall and may receive and accept orders, directions and proposals for insurance, and make insurance upon all ships and vessels whatsoever in port or at sea, or for and upon any voyages or adventures whatsoever, or for and upon all goods, merchandise, property and effects whatsoever, and for and upon all money, coins, bullion or other valuable things whatsoever, in or upon any such ship, laden, or to be laden, and in and upon the freight of goods or merchandise carried, or to be carried upon any ship or vessel or on any voyage whatsoever."

With reference to these Acts, chapters 76, 77, 78 and 79, the undersigned would refer to his approved report of 27th October, 1875, upon the Prince Edward Island Act



to incorporate the Merchants' Marine Insurance Company of Prince Edward Island, which report contains the following language :—

"It appears to the undersigned that, under the express language of this clause, it is attempted to give the company power to do an insurance business with persons not residents of the province, in respect of risks on vessels not touching provincial ports, in a word to do a universal insurance business. The power of provincial legislatures to incorporate insurance companies is to be found, if at all, in the 11th subsection of the 92nd section, British North America Act, 1867, which gives to the local legislature authority to make laws for the incorporation of companies with provincial objects. It appears to the undersigned, that the powers attempted to be conferred on this company are beyond any fair construction of these words."

The undersigned would also refer to his approved report of 16th November, 1875, with reference to the Ontario Act to incorporate the Canada Fire and Marine Insurance Company, which report contains the following language :—

"The powers professed to be conferred by this Act appear to the undersigned too wide. It authorizes the company to effect policies of fire insurance with any persons or bodies corporate and to make contracts of marine insurance with any persons, in respect to losses to vessels navigating any waters from or to any ports. It is not provided that the chief place of business shall be in the province. Power is given to comply with the laws of other provinces or states, wherein the company may carry on business, and the word "Canada" introduced into the name is of itself indicative of more than provincial power. On the 31st March, 1875, chapter 82, of the statutes of Nova Scotia for 1874, was disallowed upon grounds applicable to this Act."

Much of the language quoted appears to apply to all the Acts now under consideration. Chapter 76 indeed does not expressly authorize the doing of a universal insurance business, though its language is wide enough for such an interpretation, but the corporations created or perpetuated by the remaining Acts, are expressly authorized to do a universal marine insurance business.

The undersigned recommends that the attention of the Lieutenant-Governor of Nova Scotia should be called to the suggested difficulties, with an intimation that, subject to such observations as he may make, it would seem that these Acts cannot be left to their operation.

Chapter 89.—"An Act to incorporate the Colchester Lumber Driving and Manufacturing Company." This Act authorizes the company to build dams, sluices and breakwaters, and otherwise improve Little River, in Brookfield, in the county of Colchester, and its tributaries, so as to make the same navigable for logs, timber and lumber, and to levy tolls for conveying logs, timber and lumber down such river and its tributaries, and it provides for a lien on all logs, &c., passing through the dams, &c., and for the enforcement of such lien. The 6th section provides that nothing in the Act contained shall be construed to authorize the company to interrupt, hinder or prevent the navigation of any navigable river or other navigable waters.

Chapter 90.—"An Act to incorporate the St. Margaret's Bay Lumber and Timber Driving Company." This Act gives substantially the same powers with reference to the Ingraham and Indian Rivers and their tributaries.

Chapter 91.—"An Act to incorporate the Cumberland Driving Company."

This Act gives substantially the same powers with reference to the Moose River, Apple River, Half-Way River and River Hebert, save that the power to levy tolls is confined to levying tolls for conveying logs, &c., down such of the rivers as the company shall have so improved as to make navigable for logs, timber and lumber.

Chapter 92.—"An Act to incorporate the Liscomb River Driving Company." This Act gives substantially like powers as are given by chapters 89 and 90, with reference to the east and west branches of the Liscomb River and their tributaries, but it does not contain the restrictive clause providing against the company being authorized or empowered to interrupt the navigation of any navigable water.

The undersigned is not aware whether any of the rivers referred to in these Acts is, to any extent, at present navigable. If so, none of the Acts can be said to be wholly

unobjectionable, as they appear to authorize the companies to levy tolls, not merely for the conveyance of the logs through the improvement, but also for their passage down those parts of the rivers which are navigable. It is further to be observed that it might become an important question whether works of this kind should be constructed under local authority in important navigable rivers, the navigation of which might, by a small expenditure, be improved. Chapter 92 is open to the additional objection that the restrictive clause is not inserted. It is presumed that none of these rivers are of great importance, and that no serious embarrassment will result from the operations of the companies. Of course they do not, in law, acquire by these local Acts any power to interfere with the free navigation of such parts of the river as are navigable, and, upon the whole, the undersigned submits that, notwithstanding the difficulties to which he has referred, they may be left to their operation, the attention of the Lieutenant-Governor being called to the difficulty.

EDWARD BLAKE,

*Minister of Justice.*

*The Hon. the Provincial Secretary to the Hon. the Minister of Justice.*

PROVINCIAL SECRETARY'S OFFICE, HALIFAX, N.S., 18th October, 1876.

SIR,—I have the honour to acknowledge the receipt from his Honour the Lieutenant-Governor, of a copy of a despatch from the Hon. the Secretary of State, under date 21st September, inclosing copy of an order of the Hon. the Deputy of the Governor General in Council, and of the report of the Honourable the Minister of Justice therein referred to, on the subject of the Acts passed by the legislature of Nova Scotia in the 1st session of the 26th Assembly, 38 Victoria, 1875.

I have carefully read the order and report; and with regard more particularly to the Act incorporating Marine Insurance Companies, or amending such Acts previously enacted, I would beg to call your attention to the fact, that a period of eighteen months has elapsed since the Acts referred to were passed, and that many liabilities, amounting in the aggregate to a very large sum, have been entered upon by the several companies supposed to be empowered to do so. Were the Acts now to be disallowed, almost endless confusion and embarrassment would result, which it would be desirable to avoid if possible.

The reasons given in your report for believing that the powers assumed to be conferred on the several companies are *ultra vires* of the provincial legislature, are doubtless very strong; and it appears to me that in such cases the only remedy will be for the Dominion Parliament to pass an Act ratifying and confirming the provisions of the local Acts, at its next session.

Should you approve of this course, I would further suggest that the Acts be not officially published as disallowed; so long a time having elapsed since the passing of the Acts, no great injury can occur from the continuance of the same state of things until parliament meets.

I do not see that the legislature of this province can remedy the defects in the Acts, for the same reason which would render the Acts already passed inoperative. It appears to me, therefore, that the power to apply a remedy lies in the legislature of the Dominion alone; power to issue policies on voyages to or from the province only, would so restrict the business as to render it not worth undertaking.

I have, &c.,

P. CARTERET HILL.

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*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th October, 1876.

The undersigned calls attention to the report of the Minister of Justice of the 15th September last, with reference to the Acts passed by the legislature of Nova Scotia, in the first session of the 26th Assembly, 38th Victoria (1875), with special reference to,

Chapter 76. An Act to incorporate the Globe Marine Insurance Company.

Chapter 77. An Act to continue and amend the Acts relating to the Nova Scotia Marine Insurance Company.

Chapter 78. An Act to incorporate the Maitland Marine Insurance Company.

Chapter 79. An Act relating to the Union Marine Insurance Company of Nova Scotia.

In that report the Minister recommended that the attention of the Lieutenant-Governor of Nova Scotia should be called to the difficulties suggested by him, with an intimation that, subject to such observations as he might make, it would seem that these Acts should not be left to their operation.

In reply to the communication from the Secretary of State to the Lieutenant-Governor, as suggested in the report, the Provincial Secretary of Nova Scotia communicated with the Minister of Justice by letter, dated 18th October, instant. In reply, a telegram was sent by the Secretary of State to the Lieutenant-Governor, in the following words :—

“ Letter of Provincial Secretary received. Unless your government undertakes, by telegraph, on Monday, to promote amendatory legislation next session, concerning insurance Acts, they will be disallowed. Time expires next week. Companies interested must apply to parliament in the usual way, if they desire Canadian legislation. Same course adopted with Ontario company last session.”

In reply to that telegram, the Secretary of State, on the 23rd instant, received from the Lieutenant-Governor, a telegraphic dispatch, as follows :—

“ Have submitted your message to the government, who undertake at next meeting of assembly to promote legislation, amending the insurance Acts in the sense indicated in the memorandum of the Minister of Justice, and in such form as he shall suggest, and companies requiring Canadian legislation will apply for charters at Ottawa.”

The undersigned recommends that, on the representations and assurances given by the government of Nova Scotia, with reference to the four Acts hereinbefore alluded to, that the right of disallowance be not exercised in respect of such Acts.

R. W. SCOTT,

*Acting Minister of Justice.*



## NOVA SCOTIA—39TH VICTORIA, 1876.

(2ND SESSION—26TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 16th November, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, November, 13th, 1876.

With reference to the statutes of the legislature of Nova Scotia, passed in the year 1876, 39th Victoria, the undersigned begs to report as follows :—

Chapters 2 to 21, inclusive, 23, 25 to 41, inclusive, 44 to 48, inclusive, 50 to 87, inclusive, 79 to 91, inclusive, 93 to 99, inclusive, do not appear to call for special observation, or for the exercise of the power of disallowance.

Chapter 1 : “An Act to alter and amend chapter 75 of the revised statutes of Licenses for the sale of Intoxicating Liquors, and the Acts in amendment thereof.”

This Act contains some provisions restrictive of the sale of intoxicating liquors. Similar legislation has been in many cases left to its operation, and the same course is recommended on this occasion.

In the Act the word “offence” is several times used to describe breaches of the law. It has been remarked, on former occasions, that this word is hardly a proper description of a breach of the provincial law, being rather descriptive of a criminal act.

The attention of the Lieutenant-Governor may be directed to the suggestion.

Chapter 22 : “An Act respecting the Legislature of Nova Scotia.”

By the 2nd section of this Act the legislative council of Nova Scotia, and its committees and members respectively, are given such and the like privileges, immunities and powers as are for the time enjoyed by the Senate of Canada, its committees and members; and the House of Assembly of Nova Scotia and the committees and members thereof respectively, are given the like privileges, immunities and powers as are for the time enjoyed by the House of Commons of Canada, and its committees and members.

The Senate and House of Commons enjoy all the privileges, immunities and powers of the House of Commons of the United Kingdom.

Acts purporting to confer upon the legislatures of Ontario and Quebec such privileges, immunities and powers were objected to, and in the case of Ontario, the Act was disallowed, while in that of Quebec it was repealed.

The undersigned begs to refer to the reports upon these Acts, inasmuch as the 2nd section of the Act under consideration professes to give, in the case of Nova Scotia, the powers which it was decided that the legislatures of Ontario and Quebec should not assume.

It is true that in the 23rd section it is provided that nothing in the Act shall be construed to contravene or conflict with any legislation, *ultra vires* of the Parliament of Canada, or with any enactment of the Imperial Parliament in force in the province, but by the 2nd section there is an express assertion of a right to legislate in excess of what has been decided to be the legislative power of the province.

The undersigned recommends that the attention of the Lieutenant-Governor should be called to the objection with a view to the repeal of this section before the time within which the Act can be disallowed shall have expired. With reference to the other provisions of this Act, the bulk of them are contained in the Act of the province of Ontario upon the same subject, which has been left to its operation.

The undersigned refers to his report upon that Act, and for the reasons therein given he does not recommend interference with such of the provisions of this statute as are therein contained, but he observes, amongst the supplementary provisions, some to

which he is bound to call attention. Among the prohibited matters which are to be deemed infractions of this Act, and which are to be adjudged on and punished by the House is section 14, subsection 3, the refusal or failure of any member or officer of either House, or other person to obey any rule, order or resolution of such House. Whatever view may be taken of so much of this subsection as applies to members or officers of the House, it seems obvious that its application to the subject in general would be to put the subject at the mercy of either House, no matter what might be the nature of the rule, order or resolution which it passed.

The last paragraph of the 17th section provides that all rules of either House not inconsistent with the Act shall have the force of law until altered, amended or repealed by such House.

These provisions give, in the opinion of the undersigned, objectionable powers to to each House, and he recommends that the attention of the Lieutenant-Governor should be called to them with a view to their being repealed before the time within, which the question of disallowance may be determined.

Chapter 24 : "An Act to amend chapter 25 of the Revised Statutes, 4th Series, of the Church of England."

This Act repeals the Act cited in the title, which was a statute containing various provisions for the management of the affairs of members of the Church of England.

The substituted sections are in the main similar to those of the repealed Act, but several provisions are introduced, among which are some giving greater powers to the lay members of the church.

It is to be presumed, as well from the constitution of the church as the character of these provisions, that they are based upon and carry out the views of its Synod.

With reference to some of them, had the legislation been entirely novel, it might be necessary to consider how far it was proper, under our political system, to make such enactments, but the circumstances to which the undersigned has referred, lead him to the conclusion that this is not a question which can be fitly raised with reference to this Act, and he recommends that it be left to its operation.

Chapter 42 : "An Act respecting the Lower Chezzetcook Dyke, in the county of Halifax."

The 4th section of this Act uses the term "offence," the objection to which has already been the subject of remark.

Chapter 43 : "An Act to provide for supplying the town of Dartmouth with water."

The 21st section gives power to the council to make by-laws, &c., amongst other things, to prevent frauds being practiced, and under it the observance of the by-laws, &c., may be enforced by attaching penalties not exceeding forty dollars or three months imprisonment at hard labour in the county jail.

The wording of the clause is wide enough to embrace breaches of the criminal law, and the power of the provincial legislature to inflict a punishment of imprisonment at hard labour may be questioned.

The attention of the Lieutenant-Governor should be called to this section with a view to the amendment of the Act.

Chapter 49 : "An Act to amend the Act to incorporate the town of Truro."

Sections 8 and 10.—It may be questioned whether some of the provisions of these sections do not trench upon the criminal law and procedure, but the undersigned does not recommend that the Act be disallowed on that ground.

Chapter 88 : "An Act to amend the Act to incorporate the Colchester Lumber Driving and Manufacturing Company."

The undersigned refers, in connection with this Act, to his observations made upon the original Act.

Chapter 92 : "An Act to incorporate the Nova Scotia Fishing Company, Limited."

By this Act certain persons are constituted a body corporate for the purpose of fishing, and for acquiring, equipping and managing boats and vessels and other property, and conducting all necessary business in connection with the same.



There is no provision whatever as to the place or places at which the business is to be carried on, or as to the range of the powers of the company, which therefore may, under the unlimited language of the Act, do a business beyond the range permissible to a company incorporated under a provincial statute.

The attention of the Lieutenant-Governor should be called to this objection, with a view to the amendment of the Act.

EDWARD BLAKE,  
*Minister of Justice.*

EXTRACT from a Report of the Hon. the Minister of Justice, dated 13th October, 1876.

Chapter 9.—“An Act respecting the Legislative Assembly.”

This Act contains various clauses conferring privileges upon the assembly and its members.

The exact range of the powers of local legislatures in this particular has been the subject of discussion in more than one case. Besides other clauses open to question the 11th section provides that the assembly shall have all the rights and privileges of a court of record for the purpose of summarily inquiring into and punishing as breaches of privilege or as contempt of court (without prejudice to the liability of the offenders to prosecution and to be punished criminally or otherwise according to law independently of the Act) several acts, matters and things, amongst them are assaults on members of the assembly, not merely during the session, but also for twenty days before and after the same, giving false evidence before the assembly, or a committee thereof, presenting to the assembly forged or falsified documents with an intent to deceive, forging, falsifying, unlawfully altering papers and certain other matters which appear to be clearly within the criminal law. The section declares that the assembly possesses the power and jurisdiction to provide by statute, as may be necessary or expedient, for inquiring into, judging and pronouncing upon the commission or doing of any such acts, matters or things, and awarding and carrying into execution the punishments thereof provided by the Act.

The 12th section provides that any person guilty shall be liable, in addition to any other penalty or punishment to which he is by law subject, to imprisonment for such time, during the session of the legislative assembly then being held, as may be determined by the legislative assembly.

The 13th section provides that if any person is declared to be guilty of contempt for any of the acts, matters and things in section 11 set forth, is directed to be taken into custody or to be imprisoned, the speaker shall issue his warrant to the sergeant-at-arms attending the House, or to the keeper or governor of the common jail in county of York, to take such person into custody, and to keep and detain him in his custody in accordance with the order of the assembly.

The 14th section declares that the determination of the assembly upon any proceeding under the Act within the authority of the province, shall be final and conclusive.

It appears to the undersigned that several of these provisions are open to very serious question, as being *ultra vires* of a local legislature, but almost all of them are contained in an Act of the legislature of Quebec, upon the same subject, which was left to its operation.

There are, indeed, some new provisions, but it would not be advisable, upon the principle upon which the Quebec Act was allowed, to advise the disallowance of this Act by reason of the insertion of these provisions, and the undersigned feels bound to recommend that, following the precedent referred to, the Act should be left to its operation, it being quite possible for those who may object to its constitutionality to raise their objections in the courts.



## NOVA SCOTIA, 40TH VICTORIA, 1877.

(3RD SESSION—26TH GENERAL ASSEMBLY.)

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st April, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th March, 1878.

I beg to report upon the Acts of the legislature of the province of Nova Scotia passed in the fortieth year of Her Majesty's reign (1877), received by the Secretary of State, on the 10th day of July, 1857, as follows:—

Chapters 1 to 24, 26 to 56, 58 to 66 and 70 to 88.

To the above Acts there appears to be no objection. I recommend that they be left to their operation.

Cap. 25.—“An Act further to amend the laws for the preservation of useful Birds and Animals.”

The subject matter of this Act comes, I think, within the legislative authority of the provincial legislature, and is therefore free from objection so far as its constitutionality is concerned. Objection, however, has been made on behalf of the officers of Her Majesty's Army stationed at Halifax to the provisions of section 18, which declares that such officers shall be entitled to the privileges of the game laws of the province on the payment of an annual fee of five dollars, &c. The ground of objection being, not that the fee is charged, but that a distinction has been made between the officers and the inhabitants of the province generally. The late Sir W. O'Grady Haly, General Commanding the Forces in British North America, addressed a communication on the subject to Her Majesty's Secretary of State for War, dated 15th October, 1877. This communication was transferred to the Secretary of State for the Colonies, who, on the 30th of November, 1877, transmitted the same to his Excellency the Governor General, and expressed the hope that the provincial government might, on further consideration of the matter, be disposed to recommend to the legislature an amendment of the Act, so as to allow persons serving in Her Majesty's Army and Navy in the province the same privilege as persons domiciled there. I recommend that copies of the communications referred to be transmitted to the Lieutenant-Governor of Nova Scotia, for the information of his government, with the request that the hope expressed by Lord Carnarvon and above alluded to may be taken into their favourable consideration.\*

Cap. 57.—“An Act further to amend the Act to incorporate the town of New Glasgow.”

The first section of this Act declares that the municipal courts of the town of New Glasgow shall be a court for the trial of civil causes, known as the town court, to be presided over by the stipendiary magistrate, and a court for the transaction of all police and criminal business of the town, known as the police court, to be presided over by the stipendiary magistrate, recorder or warden.

The fourth section provides that all fines, costs and fees shall go to form a fund, out of which the salary of the recorder and the expenses of the court shall be defrayed, and that any deficiency shall be paid out of the general funds of the town. I had occasion to consider the right of the local legislatures to legislate in respect of the application of fines arising from the criminal law, in a report on the legislature of the province of British Columbia, dated 29th September, 1877. In that report, which was approved of, the following remarks occur, namely:—

The Act under consideration being as follows: “Notwithstanding anything to the contrary contained in any Act, ordinance or proclamation, it shall be lawful for every

\*NOTE.—For copies of this correspondence see pp. 502 and post.

municipality paying the annual salary of a police magistrate and maintaining a police force to retain and use, as part of the municipal revenues, all police court fines, fees and forfeitures."

This provision is wide enough to cover not only fines and forfeitures incurred for breach or of non-compliance with laws of the province, made in relation to matters coming within the classes of subjects over which the provincial legislature has exclusive legislative authority, but also all fines and forfeitures which may be imposed at the police court under the criminal law of Canada, or by reason of the breach of or non-compliance with the laws of Canada.

The 102nd section of the "British North America Act, 1867," provides that: "All duties and revenues over which the respective legislatures of Canada, Nova Scotia and New Brunswick, before and at the union, had and have powers of appropriation, except such portion thereof as are by this Act reserved to the respective legislatures of the provinces, or are raised by them in accordance with the special powers conferred on them by this Act, shall form one consolidated revenue fund, to be appropriated for the public service of Canada, in the manner and subject to the charges in this Act provided.

There does not appear to be any provision in the Act reserving to the provinces the revenues derived from fines or forfeitures under the criminal law, and as the parliament of Canada has exclusive legislative authority over the criminal law (except the constitution of courts of criminal jurisdiction), and as that parliament alone can alter the existing criminal law, under which fines or forfeitures are imposed, and can create new crimes, punishable by fine or forfeiture, and alone increase or reduce the amounts of fines and forfeitures under the criminal law, or by any of the other laws of Canada, is *ultra vires* of the powers of the provincial legislature, and I recommend that the attention of the Lieutenant-Governor be called to this Act, to the end that the same may, at the next session of the provincial legislature, be repealed, or so amended as to confine it to fines and forfeitures arising under laws of the province made in relation to matters coming within the exclusive legislative authority of the province; otherwise, that it be disallowed."

These remarks are equally applicable to this section, and I recommend that the same course be pursued in this case as was then followed.

The eighth section of the Act now under consideration provides that, "The police court shall have and exercise, within the bounds of the municipality, all the powers and jurisdiction in criminal matters conferred upon one or more justices of the peace, or stipendiary or police magistrate, by an Act of this province or of the Dominion of Canada."

In reporting upon a provision of a similar nature, of an Act of the legislature of the province of Manitoba, the then Minister of Justice, on the 17th October, 1871, stated as follows:—

"This section provides that a police magistrate shall have all the powers possessed by one, two or more justices of the peace."

"Now, it is obvious that if one Act of the Dominion parliament, relating to criminal law, provided for the trial of the offender before two justices of the peace, no provincial legislature has the power of amending such provision, by giving any one person, although a judge, or stipendiary or police magistrate, the power conferred by the Dominion Act, on two justices."

"It is suggested that the Act in question should be amended at the next session of the legislature by substituting the following words for those above quoted, viz:— 'In addition to all the powers possessed by any one justice of the peace, shall also have all the powers conferred by any statute of the province upon two or more justices of the peace.'"

I recommend that the attention of the Lieutenant-Governor be called to these remarks.

Cap. 67.—"An Act to incorporate the Truro Marine Insurance Company."

This Act, by section 11, authorizes the directors of the company, at the office, in Truro, to commence and conduct the business of marine insurance in all its branches,



with respect to vessels owned or registered, and cargoes owned or shipped in the province of Nova Scotia, and within the said province to make contracts of insurance upon all subjects of marine insurance, including freight of such vessels, and to transact all matters relating to the business of a marine insurance broker, insurer or underwriter, within the province of Nova Scotia, with respect to vessels registered or owned, and cargoes owned or shipped in the province aforesaid, and freights of such vessels.

The power of a local legislature to incorporate an insurance company must be derived from the power given to incorporate companies with provincial objects, and what is or is not a provincial object in reference to marine insurance, is by no means easy of determination. I am not prepared to say that the powers to be conferred upon the company, by the section in question, are not within the authority of the provincial legislature, and in view of the doubts which surround the subject, I recommend that the power of disallowance be not exercised in respect to this Act.

Cap. 68.—“An Act to incorporate ‘The Shipowner’s Marine Insurance Company, of Windsor (Limited).’”

The second section of this Act gives to the company similar powers to those given by the eleventh section to the company incorporated by cap. 67. The same remarks apply to this.

Cap. 69.—“An Act to amend the Act to incorporate ‘The Maitland Marine Insurance Company.’”

This Act gives to the Maitland Marine Insurance Company similar powers to those above referred to, and the same remarks apply also to this Act.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

R. LAFLAMME,  
*Minister of Justice.*

*General Sir W. O’Grady Halcy to the Governor General.*

HEADQUARTERS, HALIFAX, N.S., 18th October, 1877.

MY LORD,—I have the honour to forward, for your Excellency’s information, a copy of a letter which, in the interest of British officers serving in this command, I have deemed it my duty to address to the Right Hon. the Secretary of State for War, with a view to the subject thereof being submitted for the consideration of the law officers of Her Majesty’s government.

I have, &c.,

W. O’G. HALY,  
*General, Commanding the Forces in B.N.A.*

*General Sir W. O’Grady Halcy to the Secretary of State for War.*

HALIFAX, N.S., 15th October, 1877.

SIR,—I beg to forward herewith a copy of the Statutes of Nova Scotia, passed in the fortieth year of the reign of Her Majesty, and to refer particularly to your consideration, cap. 25, described as, “An Act further to amend the laws for the preservation of useful Birds and Animals.”

By the 18th clause of this Act (page 26), you will observe that a tax or fee of \$5 (equivalent to about £1 sterling) is imposed upon all officers of this garrison desiring to avail themselves of the privilege of the game laws, as being persons not having their domicile in the province.



I feel it incumbent upon me to point out that this enactment, imposing a tax upon British officers stationed on duty in this province, from which the natives are exempt, has not unnaturally caused a feeling of considerable dissatisfaction among officers serving in this command.

It is not that the officers object in any way to the payment of a fee for the privilege of shooting, were it imposed equally upon all their fellow-subjects but they consider it hard and unjust that by an Act of the provincial legislature, they should thus be placed in an inferior position to the native residents in the province. The more so, as in Nova Scotia alone of all the provinces of the Dominion of Canada, is a British officer, by legislative enactment, treated as an alien.

I would beg to submit for consideration that if it be competent for a provincial legislature, in any portion of Her Majesty's dominions, thus to pass an Act discriminating against British officers, there appears no reason why it may not ultimately seek to augment its revenues by similarly imposing taxes upon the property of officers, while exempting the native residents.

The officers under my command hold the opinion, in which I entirely concur, that, while serving here under Her Majesty's order, we are, for the time being, *bona fide* domiciled in Nova Scotia, whether occupying government quarters or residing in hired houses, and, in the latter case, it is the more hard, as while liable to all rates and taxes in the city of Halifax, equally with other residents therein, the equality ceases the moment he desires to shoot game in the province.

In conclusion, I would beg that this case may be submitted for the opinion of the law officers of the crown, and that Her Majesty's government may be pleased to take steps to relieve military officers, serving in this command, from the humiliating position in which we are placed by this Act of the legislature of Nova Scotia.

I have, &c.,

W. O'G. HALY,

*General Commanding the Forces in B.N.A.*

*The War Office to the Colonial Office.*

WAR OFFICE, 17th November, 1877.

SIR,—I am directed by the Secretary of State for War to transmit to you, to be laid before the Earl of Carnarvon, a copy of a letter from the General Officer commanding the troops in British North America, pointing out that, by the eighteenth section of the Act, cap. 25, passed this year by the General Assembly of Nova Scotia, "To amend the laws for the preservation of useful birds and animals," a special fee of \$5 is imposed upon officers of the garrison, who desire to avail themselves of the privileges of the game laws.

Mr. Hardy is of opinion that, for the reasons given by Sir W. O'G. Haly, these officers may fairly expect to be placed on the same footing, in this respect, as natives of the province, and Mr. Hardy trusts that, should Lord Carnarvon concur in this view, he will take the necessary steps for causing this question to be submitted for the consideration of the government and the general assembly of Nova Scotia.

I am, &c.,

RALPH THOMPSON.

*The Earl of Carnarvon to the Earl of Dufferin.*

DOWNING STREET, 30th November, 1877.

MY LORD,—I have the honour to transmit to your Lordship a copy of a letter from the War Office, with an extract from a communication from the General Officer commanding the troops in British North America, respecting a fee of five dollars, imposed upon officers of the garrison at Halifax, who desire to avail themselves of the privileges of the game laws.

On reference to the provincial Act complained of, viz. : cap. 25 of 40 Vic., I observe that officers of the army and navy serving at Halifax, are more favourably treated, in regard to the amount of the fee required, than the inhabitants of other portions of the Dominion, beyond the limits of the province; but, notwithstanding this privilege, I hope that the provincial government may, on further consideration of this matter, be disposed to recommend to the legislature an amendment of the Act, so as to allow to persons serving in Her Majesty's army and navy in the province, the same privileges as are granted to persons domiciled there.

I have, &c.,

CARNARVON.

*Lieutenant-Governor Archibald to Secretary of State.*

GOVERNMENT HOUSE, HALIFAX, N.S., 8th April, 1878.

SIR,—I have the honour to acknowledge the receipt of your despatch dated the 3rd April, 1878, inclosing a copy of minute of council, comprising the report of the Hon. the Minister of Justice in reference to the provincial statutes of 1877, and have, as desired brought to the notice of my government the remarks made by the minister to 25th, 57th, 67th, 68th, and 69th chapters of these Acts.

In reference to cap. 25 for the preservation of useful birds and animals, the recommendation of the Minister of Justice that a copy of the correspondence commencing with the letter to the Secretary of War by the late Sir W. O'Grady Haly, has been overlooked, no copy of this correspondence having been inclosed with the minutes of council; but I am happy to say that the clause, of which the officers of the army and navy complained, has been altered, and a compromise agreed on which has been embodied in an amendment of the Act in question passed at the session just closed, and which disposes of the difficulty in a manner satisfactory to all parties.

I have, &c.,

ADAMS G. ARCHIBALD,

*Lieutenant-Governor*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd July, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th June, 1878.

I have the honour to report upon cap. 81 of the Statutes, passed by the legislative assembly of the province of Nova Scotia, in the year 1877, intituled: "An Act to incorporate the Bedford Grain Importation, Milling and Manufacturing Company,

Limited," which Act was not reported upon in the report upon the other Acts. Consideration of the Act was reserved till information was obtained as to whether or not the Nine Mile River, referred to in the Act, is navigable or not. From information obtained from the Department of Marine and Fisheries, I learn that the river is not navigable for boats or vessels. The Act appears, therefore, to be unobjectionable, and I recommend that it be left to its operation.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

R. LAFLAMME,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th July, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th July, 1878.

In a report upon the Acts of the legislative assembly of the province of Nova Scotia, passed in the fortieth year of Her Majesty's reign, 1877, I pointed out certain objections to cap. 57, intituled: "An Act further to amend the Act to incorporate the town of New Glasgow," and recommended that the attention of the Lieutenant-Governor should be called thereto.

A despatch has been received from the Lieutenant-Governor stating that at the next session of the legislature his government will promote the necessary legislation to remove the objections taken to the Act.

Relying upon this assurance, I recommend that the Act be left to its operation.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

R. LAFLAMME,  
*Minister of Justice.*



## NOVA SCOTIA—41ST VICTORIA. 1878.

(4TH SESSION—26TH GENERAL A-SEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 25th June, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th June, 1879.

I have the honour to report that I have examined the Acts passed by the legislature of the province of Nova Scotia, in the year 1878, in the fourth session of the twenty-sixth general assembly convened in the province, chaptered 1 to 78 inclusive, being all the Acts passed in that session.

They all seem unobjectionable, and I recommend that they be left to their operation.

*Reserved Bill.*

A Bill intituled : " An Act to incorporate the Nova Scotia District Branch of the Independent Order of Oddfellows," was also passed, but was reserved by his Honour the Lieutenant-Governor for the signification of his Excellency's pleasure thereon.

In transmitting the same the Lieutenant-Governor explains that his reasons for reserving the bill are, that the fourteenth section entrenches upon the jurisdiction of the parliament of Canada as it attempts to deal with what are unquestionably crimes, and not only does the bill undertake to deal with criminal offences, but enacts that it should not be lawful to proceed by indictment in certain specified cases, thus not only attempting to enact a criminal law, but undertaking to repeal part of the criminal statutes passed by the parliament of Canada, so far as relates to cases referred to in the clause.

The provision of the bill is clearly beyond the powers of the provincial legislature, and the objectionable provisions might, if allowed to remain upon the statute-book, be the cause of considerable inconvenience and embarrassment, although they would have no force if objections to their validity were taken, that had the bill been assented to by the Lieutenant-Governor it would have been the duty of the government to recommend its disallowance unless the objectionable clause were repealed. That such being the case, it is clearly the duty of the government not to recommend that his Excellency's assent thereto be given. I recommend that the Lieutenant-Governor be so informed.

Z. A. LASH,

*Deputy Minister of Justice.*

I concur.

JAS. McDONALD,  
*Minister of Justice.*

## NOVA SCOTIA—42ND VICTORIA, 1879.

(1ST SESSION.—27TH GENERAL ASSEMBLY.)

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd June, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th June, 1889.

I have the honour to report upon the Acts of the legislature of the province of Nova Scotia, passed in the forty-second year of Her Majesty's reign (1879), received by the Secretary of State on the 21st day of August, 1879, as follows :—

Chapters 1 to 21 and 23 to 91.

I recommend that the power of disallowance be not exercised with respect to these Acts.

Cap. 22 : "An Act respecting Estreats."

This Act will be reported upon separately.

JAMES McDONALD,

*Minister of Justice.**Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th October, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th September, 1880.

I have the honour to report :—

That an Act was passed by the legislature of the province of Nova Scotia in the year 1879, being chapter 22, and entitled : "An Act respecting Estreats."

The Act makes provision for the collection of all fines and forfeited recognizances imposed or forfeited by or before the Supreme Court in any county of the province, &c.

The 12th section is as follows : "The sheriff shall without delay pay over all money by him collected, to the officer or person entitled to receive such money under section 96 of chapter 171 of the Revised Statutes, third series, and the same shall be appropriated in the manner mentioned in section 97 of said chapter."

The provisions of sections 96 and 97, chap. 71 of the Revised Statutes, 3rd series, above referred to, are as follows :—

"96.—All fines and forfeiture levied and collected by the judgment of the Supreme Court in any of the counties in this province, shall be paid into the hands of the county treasurer for such counties respectively."

"97.—The fines and forfeitures so paid to the county treasurer shall be paid and applied by him towards the payment of witnesses attending criminal trials, and also witnesses attending prosecutions of offences committed against the provisions of the first and second sections of chapter one hundred and sixty-three of the Revised Statutes, of offences against the Administration of Justice, under the same rules and regulations as provided by the Act hereby amended."

If the Act now under consideration made provision as to the disposal of fines and forfeitures under the criminal law, or by reason of the breach of, or non-compliance with, any of the laws of Canada, it would, in my opinion, be beyond the powers of the provincial legislature ; but as the 96th and 97th section of chapter 171 of the Revised Statutes above referred to were passed before confederation no doubt can exist as to

the constitutionality of their provisions, and as the Act now under consideration, so far as the appropriation of the money is concerned, leaves the law as it stood since confederation, it is not open to the objection referred to, and although it may be doubted whether it is entirely within the power of the local legislature to make the provisions which the Act does make on the subject, yet the Act affects merely the procedure in collecting the fines, &c., and does not deal with the disposal. I think it may safely be left to its operation.

I recommend, however, that the attention of the Lieutenant-Governor be called to the above remarks.

JAMES McDONALD,

*Minister of Justice.*

## NOVA SCOTIA—43RD VICTORIA, 1880.

(2ND SESSION—27TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 29th July, 1881.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th July, 1881.

I have the honour to report with respect to the Acts passed by the legislature of Nova Scotia in the year one thousand eight hundred and eighty, as follows :

I recommend that the power of disallowance be not exercised with respect to any of the said Acts, being chapters one to seventy-seven inclusive.

I would remark, however, that the provisions of chap. 9 seem to entrench upon the regulations of trade and commerce ; that sec. 14 of chap. 11, appears to be beyond the powers of the legislature, in so far as they relate to the Court of Vice Admiralty, and that some of the provisions of section 7 of chap. 68, seem to deal with the subject of criminal law or the procedure in criminal cases. None of such provisions are of a nature calculated to cause any inconvenience, even though they be beyond the powers of the legislature, and for that reason I have not thought it necessary to recommend the exercise of the power of disallowance with respect to the Acts.

A. CAMPBELL,

*Minister of Justice.*



## NOVA SCOTIA--44TH VICTORIA, 1881.

(3RD SESSION--27TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th February, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th January, 1882.

*To His Excellency the Governor General in Council.*

The undersigned has the honour to report, with respect to the Acts passed by the legislature of the province of Nova Scotia, in the year 1881, as follows:—

Chapters 1 to 10, 12 to 15 and 17 to 75.

The undersigned recommends that the power of disallowance be not exercised with respect to these Acts.

Chap. 11. An Act in reference to Crown Lands and Crown Land Surveyors.

Section 3 of this Act is as follows:—

“Whenever proceedings shall be taken for the escheat of any lands, such lands shall, from the date of the filing of the inquest of office, be deemed and held to be vested in the Crown, for all purposes connected with the forfeiture of such lands from trespasses, and for the punishment of any persons trespassing thereon, and for the reclamation of any timber or other property therefrom, and all proceedings relating to any of the matters in this land referred to, shall and may be taken in the name of Her Majesty the Queen.”

As the judgment of the Supreme Court of Canada, in the case of the Attorney General of Ontario *vs.* O'Reilly,\* connected with the escheat of the Mercer estate, decides that the Dominion and not the province is entitled to lands which escheat, and as that judgment, unless reversed by a higher tribunal, must be taken as declaring the law on the subject, the undersigned recommends that the Lieutenant-Governor of Nova Scotia be informed that unless the 3rd section of the Act now under consideration be repealed during the present session of the Nova Scotia legislature, the same will be disallowed.

Chap. 16. An Act to amend the Nova Scotia Railway Act of 1880.

This chapter will form the subject of a special report.

A. CAMPBELL,

*Minister of Justice.*

*Petition of the Windsor and Annapolis Railway.*

WINDSOR AND ANNAPOLIS RAILWAY COMPANY,  
GENERAL MANAGER'S OFFICE, KENTVILLE, N.S., 1st Aug., 1881.

SIR,—I beg to inclose, for your information, a copy of the petition which my company were advised to present to his Excellency the Governor General, praying for the disallowance of the Act, chap. 16, passed at the last session of the legislature of Nova Scotia, intituled: “An Act to amend the Nova Scotia Railway Act, 1880.”

I have, &c.,

P. INNES,  
*General Manager.*

\*See 6 App. Reports (Ont.) 576.

*To His Excellency the Governor General of the Dominion of Canada in Council :*

The humble petition of the Windsor and Annapolis Railway Company, under their common seal, sheweth :—

1. That by an Act of the legislature of the province of Nova Scotia, passed 2nd May, 1865 (28 Victoria, chap. 13), intituled : “ An Act to provide for the construction of two other sections of the Provincial Railways,” it was enacted that the Chief Commissioner of Railways, by direction and authority of the Governor in Council, might contract for and on behalf of the province, with any responsible party or parties, for the construction of certain sections of the provincial railway, including the section from Windsor to Annapolis, on the terms and under the provisions in the said Act set forth, and it was enacted by sections 7 and 8 of the said Act, as follows, that is to say :—

“ 7. The Governor in Council may, at any time before or after the said sections, or either of them, are or is completed, by an Order in Council, assume, on behalf of the province, the ownership of the said sections, or either of them, by paying to the owners thereof the value of the same—to be ascertained as hereinafter provided, either in cash or provincial debentures, at the option of the Governor in Council.”

“ 8. The amount to be paid under the next preceding section shall be ascertained by the decision of three arbitrators ; one of whom to be appointed by the Governor in Council ; one by the owner or owners of the section, and one by the Principal Secretary of State for the Colonies. But in case of either of the said sections being so taken before completion, regard may be had by the arbitrators to the loss sustained by the contractors by means of such termination of their contracts.”

2. By an agreement dated 22nd November, 1866, made between the Chief Commissioner of Railways of the province of Nova Scotia, by the direction and authority of the Governor in Council of the said province, of the first part, and William Henry Punchard, Frederick Barry and Edwin Clark, in this petition called “ the contractors,” of the other part, and which said agreement was expressed to be made in pursuance of the provisions of the said Act of 1865, the contractors agreed to construct the railway from Windsor to Annapolis, upon certain terms and conditions in the said agreement expressed, and it was thereby provided that for the purposes of carrying out the same agreement, the contractors should have power to form a joint stock company, with such capital as might be necessary, for the purpose of enabling the contractors to sell and the company to purchase, the railway and works therein contracted for, and to take the tolls and charges therein referred to. That when, and so soon, as such company was formed and capital subscribed, as therein mentioned, the intended company should possess the said railway and works subject to the terms of the said agreement.

3. By a memorandum and articles of association, dated 26th February, 1867, and duly registered in England on the 1st of March, 1867, your petitioners were incorporated in England by the name of the Windsor and Annapolis Railway Company (Limited), for the purpose of acquiring the said railway and working the same, and for the other purposes in the said memorandum and articles of association expressed. The share capital of the company was fixed at £500,000, divided into 25,000 shares, of £20 each, with authority to borrow on bonds or debentures, or other security, to an amount not exceeding the aggregate sum of £200,000.

4. By an Act of the said legislature, passed the 7th May, 1867 (30th Victoria, chapter 36), intituled : “ An Act to incorporate the Windsor and Annapolis Railway Company,” after reciting the said Act of 1865 and the said agreement of the 22nd November, 1866, the contractors, with others, were incorporated as the Windsor and Annapolis Railway Company (being your petitioners), for the purpose of constructing a railway from Windsor to Annapolis (which it was thereby enacted that your petitioners should own), and for such other purposes, and with such extended and additional powers, privileges and authorities, as in the said Act expressed and contained.

5. By an Act of the said legislature, passed on the 14th June, 1869, intituled : “ An Act to amend the Act to incorporate the Windsor and Annapolis Railway Com-



pany," the memorandum and articles of association above (in paragraph 3) referred to, were made binding and incorporated into the now reciting Act, with the powers therein referred to.

6. Under and in pursuance of the said Acts and agreement, and of divers other transactions which have been duly effected by your petitioners with the government of Canada, and otherwise, your petitioners have constructed the said Windsor and Annapolis Railway, and have acquired, in connection therewith, and as part of their undertaking, divers other rights and powers incident thereto or connected therewith (including certain rights hereinafter particularly referred to), and have laid out very large sums of money in constructing, establishing and carrying out their said railway and undertaking, and they are now lawfully possessed of the said railway (which has been and is duly operated by them) with such several rights and powers as aforesaid.

7. By virtue of the powers in that behalf given to your petitioners, sanctioned by the said Acts of the said legislature, your petitioners issued debentures to the amount of £200,000, but their capital and funds proving insufficient for the purposes of the undertaking, they were compelled to incur sundry mortgage and other debts to a large amount beyond the amount of the said debentures, and ultimately, under a scheme of arrangement between your petitioners and their creditors, made in pursuance of an Act of the said legislature, assented to on the 12th December, 1874, and entitled: "An Act to facilitate arrangements between railway companies and their creditors," your petitioners, in order to meet their obligations, so incurred as aforesaid, have duly issued debenture stocks as follows, viz.:—"A" debenture stock for £75,000, and "B" debenture stock for £350,000, both bearing interest at the rate of 6 per cent per annum. There have been also issued shares in your petitioners' company to the amount of £301,500, which are still outstanding, Nearly all the said debenture stock and shares are held in England.

8. By "The Nova Scotia Railway Act, 1880," it was enacted (section 2) that the provisions of the same Act, from section 5 to section 32, both inclusive, should apply to every railway constructed and in operation or thereafter to be constructed under the authority of any Act passed by the legislature of Nova Scotia, and should, so far as they were applicable to the undertaking, be incorporated with the special Act authorizing the construction of the railway, unless they were inconsistent with, or were expressly varied by the special Act or other Act of the said legislature.

9. By an Act of the said legislature, assented to on the 14th April, 1881, intituled: "An Act to amend the Nova Scotia Railway Act, 1880," certain provisions of the said Act of 1880 were repealed and varied, and by section 7 it was enacted as follows:—

"7. In the case of any railway of which the Governor in Council is authorized by statute or by any agreement or contract to assume the ownership, on paying the value of the same or compensation for any part or the whole of any outlay made thereon, and it is provided by the statute, agreement or contract, that the amount of such value or compensation is to be ascertained by arbitration: The Governor in Council of Nova Scotia may enter into possession and hold such railway and assume the ownership thereof, and be vested with all the rights, property and powers intended by any such statute, agreement or contract to be conferred on the Governor in Council, on the assumption by the Governor in Council of the ownership of such railway, four weeks' notice being first given to the company in possession of the said railway, or its president, manager, secretary or agent in this province or elsewhere, of the name of the arbitrator appointed by the Governor in Council. This enactment shall not take away the right of any company to the compensation to which such company may be entitled on the award being made under the provisions of any such statute, agreement or contract, as is hereinbefore referred to."

10. Your petitioners are informed and believe that the last-mentioned Act was introduced into the House of Assembly of the said province on the 13th April, 1881, without public notice, that the same was passed by the assembly on the same day, that it was also passed by the legislative council on the same day, and assented to by his Honour the Lieutenant-Governor on the next day, the 14th April, 1881.



11. Under the circumstances aforesaid, your petitioners had no notice of the said Act or of the provisions thereof, until it had passed and been assented to, and had no opportunity of objecting to or opposing the same.

12. Section 7 of the said Act seriously prejudices the rights and property of your petitioners, and the interests of their shareholders and bondholders in respect of the said railway and undertaking, and your petitioners are greatly aggrieved by the passing, and strongly object to and would humbly protest against, the allowance of the said Act.

13. In so doing it is not necessary for them to take notice of various questions which arise (having regard to the matters hereinbefore stated, and divers other considerations) as to whether the option of purchase given by the said Act of 1865 is now continuing or operative, or whether, if so, it is not vested in the Dominion government, or whether the said Act of 1881 is not in whole or in part *ultra vires* of the legislature of Nova Scotia. Whether there may or may not be any railways in Nova Scotia differently situated from your petitioners' railway, and to which section 7 of the said Act may apply, there can be no doubt that it has been enacted with the object and intention of being applied and put in force with respect to the railway and undertaking of your petitioners. Under such circumstances, they submit that they are entitled to claim of your Excellency due consideration and protection of their rights, without reference to mere legal considerations. They conceive, indeed, that these, so far from weakening, might well serve to strengthen the grounds of this petition. But it is enough here to deal with the Act in question in the apparent sense and object in which it has been framed.

14. Your petitioners have no desire to impede any action which may be deemed beneficial to the interests of the Dominion of Canada or the province of Nova Scotia. On the other hand, if upon terms fair and just towards them and their interests, and in a mode not invading their rights, it should be deemed expedient that the government should acquire their undertaking, they would be prepared to concur in that decision, although it might interfere in some measure with their realizing at last, and after a long period of effect, the reasonable expectations of profit which induced them to undertake their enterprise. But they cannot consent to be dispossessed of their property and rights in a mode (as provided by the said Act) which would in effect enable the provincial government to oust your petitioners at any time upon four weeks' notice, and deprive them of any security; that before they are dispossessed, there shall be ascertained and paid, a fair and adequate price in respect of their railway, and the property, rights and advantages forming part of their undertaking.

15. The provisions above referred to, of the Act of 1865 (assuming them to apply to their undertaking) afford your petitioners (as they are advised) a security essential to their interests, viz., that such undertaking can only be assumed by the government thereunder upon the value thereof being actually ascertained and paid to your petitioners as thereby provided.

16. That security was and is the more essential by reason that in many respects the provisions of the said Act of 1865 are vague and imperfect, and it has become still more so by reason of the changes which have since taken place in the constitution and position of the province of Nova Scotia, the extension and position of your petitioner's undertaking, the various rights acquired by them, and the moneys laid out by them in respect thereof, involving considerations too numerous and complicated to be herein detailed; but which must make the due provision for, and enforcement of, your petitioner's right in the mode provided for by the Act of 1865, uncertain and difficult.

17. Under such circumstances, the reservation expressed to be made by the last clause of section 7 of the said Act of 1881, as to "the right of any company" would (as your petitioners are advised) be ineffectual, if not wholly nugatory, to afford to them due protection for their interests in case, under the earlier provisions of that section, they should be dispossessed of their railway.

18. Amongst other special circumstances affecting the position of your petitioners and their undertaking, which, as they conceive, would make the provisions of the said

section 7 especially unjust, as to them, is the fact that your petitioners are engaged in litigation with respect to certain rights of great value, derived by them from the government of Canada, as to which (without entering upon matters of detail or of controversy) it appears desirable to state as follows :—

19. Your petitioners claim to be entitled, under agreement entered into with the government of Canada on behalf of Her Majesty, in the first instance, in the month of September, 1871, and again (by way of confirmation and compromise of various disputed claims, and in consideration of large outlay and important concessions on their part) in the month of June, 1875, the exclusive right to use the branch line from Windsor to Windsor Junction, and also running powers over the trunk line from Halifax to Windsor Junction. Those rights are of the utmost value to your petitioners, in connection with their own railway and as part of their undertaking. In the month of August, 1877, however, they were (unlawfully, as they contend) dispossessed and excluded by the officers of the government from the use of the said branch railway and the exercise of the said running powers, and soon afterwards the branch railway was handed over by the government to the Western Counties Railway Company. Thereupon your petitioners took legal proceedings against that company in the Supreme Court of Nova Scotia, to establish their right to the said branch railway, and afterwards (being advised that they could not obtain a complete and effectual remedy in the premises, except as against the Crown) your petitioners caused Her Majesty's Attorney General for Canada to be joined as a defendant in the said suit, and also proceeded, by way of petition of right, against Her Majesty, in order to enforce specifically the said agreements, and to obtain redress for the breach thereof.

20. Such proceedings are still pending, and though thus far your petitioners have been successful in establishing their rights, as claimed in the said suit, the final decree in their favour, of the Supreme Court of Nova Scotia, has been carried on appeal, at the instance of the said Attorney General, to the Court of Appeal of Canada, and, at the instance of the said Western Counties Company, to Her Majesty in Council. The proceedings on the petition of right have as yet only been proceeded with so far, as that a demurrer put in thereto on the part of the Crown has been overruled.

21. In the meantime, the government of Canada having retaken possession of the said Windsor Branch Line from the Western Counties Company, have placed your petitioners again in possession thereof, under a new and temporary arrangement, without prejudice to any question in the said litigation.

22. Under the circumstances aforesaid, and having regard to the great importance of the claims so made by your petitioners, it would be especially injurious to your petitioners' rights and interests that any new power should be given to the government to take and acquire your petitioners' undertaking, while they are still in litigation.

23. Your petitioners further submit that the operation and effect of section 7 of the said Act of 1881 would be so unjust to them and to their bondholders and shareholders (who have invested large sums of money on the faith that their rights and interests would be duly maintained and protected by law) and that it is contrary to equity and universal practice to deprive and expropriate the lawful owners of property, even for objects of public benefit, without first effectually providing for, ascertaining and paying, the full value and compensation in respect of property so taken, that the provisions of the said Act of 1881 are inexpedient in the public interest, and, if carried into effect, would tend to lower the credit and reputation, in England, of the Dominion, and is contrary to public policy, and ought to be disallowed.

Your petitioners, therefore, humbly pray that the said Act of 1881 may be disallowed.

And your petitioners will ever pray, &c.

The common seal of the petitioners was  
hereunto affixed in the City of London  
on the 18th day of July, 1881, in the  
presence of



JOHN K. JACOMB-HOOD, *Chairman.*  
W. R. CAMPBELL, *Secretary.*



*The Provincial Secretary to the Honourable the Minister of Railways and Canals.*

PROVINCIAL SECRETARY'S OFFICE, HALIFAX, N.S., 17th September, 1881.

DEAR SIR,—An Act to amend the Nova Scotia Railway Act of 1880 was passed in the last session of the legislature of this province, and its disallowance having being petitioned for by the Windsor and Annapolis Railway Company, a report on the questions involved has been made by the Attorney General. I beg to inclose you a copy of this report, for your information, and with the request that you will examine into the merits of the controversy, and assist in procuring the allowance of the Act, if you can do so consistantly with your views of justice and propriety, as its final passage is a matter of great importance, in the present position of railway affairs in Nova Scotia.

I have, &c.,

S. H. HOLMES,

*Provincial Secretary.*

*Report of the Hon. Attorney General Thompson.*

ATTORNEY GENERAL'S OFFICE, HALIFAX, N.S., 21st August, 1881.

The undersigned had had before him the petition of the Windsor and Annapolis Railway Company to his Excellency the Governor General in Council, dated the 18th day of July, 1881, praying that the Act of the legislature of Nova Scotia, passed on the 14th day of April, 1881, entitled: "An Act to amend the Nova Scotia Railway Act of 1880," or certain portions thereof, be disallowed, and begs to report thereon for the information of his Honour the Lieutenant-Governor, as follows:—

The statements contained in the first four paragraphs of the petition of the Windsor and Annapolis Railway Company are admitted to be correct, but the undersigned must call attention to the fact that the two sections of chapter 13 of the Nova Scotia Acts of 1865, which are quoted in the first clause of the petition, and indeed all other provisions of said chapter 13, of 1865, which have any bearing upon the subject-matter, are made applicable to and incorporated in, the charter of the Windsor and Annapolis Railway Company by the terms of that Charter. (Chapter 36, of the Nova Scotia Act of 1867.)

It is submitted, therefore, that all the undertakings, operations and expenditures made by the company, or any other person, on the security of the Company's property, must be considered as having been made with a view to these provisions of chapter 13, of 1865, in relation to which the Act sought to be disallowed, is merely auxiliary.

The circumstances which led to the introduction and passage of the Act petitioned against are, briefly, these:—

The railway system of Nova Scotia (apart from the railways owned by the Dominion of Canada) consist of various lines, operated under different managements, the line of the petitioning company being one. It has been considered desirable, in the interests of the government of Nova Scotia and of the public at large, to combine these lines of railways under one management, if that can be accomplished without entailing too heavy burdens upon the province, or operating unjustly to those who now have interests in the railways. The only practical mode of carrying out any such policy would be to exercise, in relation to this company's railway, on behalf of and under the authority of the government of Nova Scotia, the powers conferred by section 7 and 8 of chapter 13, Nova Scotia Acts of 1865, quoted in the first clause of the petition; and, in relation to the other railways, to exercise other powers, some of them of a like character, possessed by the Nova Scotia government.



The undersigned submits that the powers conferred by sections 7 and 8 are vested in the government of Nova Scotia alone. They were undoubtedly possessed by the government of Nova Scotia, as constituted prior to the union of the provinces. When the union was consummated, the railway in respect of which these sections were enacted, remained as a local undertaking, within the province, and in regard to it the parliament of Canada had no authority to legislate, without, at any rate, first enacting that it was a railway for the general benefit of Canada, which has never been done. The undersigned for the present bases his contention, as regards the rights of the government of Nova Scotia, upon these general principles, and thinks he may fairly do so, as the petition of the Windsor and Annapolis Railway Company waives any discussion of this point, although suggesting that doubts may exist in relation to it.

No legislation exists expressly, or by necessary implication, abrogating sections 7 and 8, chapter 13, Nova Scotia Acts, 1865.

The undersigned therefore submits that the legislation effected by the statute petitioned against, is clearly within the competence of the Nova Scotia legislature.

As regard the fairness of the statutory provisions objected to, the following observations are offered :—

It has been found on a full consideration of the policy before referred to, that although it should be conceded that sections 7 and 8, chapter 13, Nova Scotia Acts, 1865, are in full force, and applicable to this company's railroad, and that the powers therein conferred are now possessed by the government in Nova Scotia, great practical difficulty may exist in carrying out these sections, if the company should be disposed to resist their operations, and should refuse, neglect or delay to make the appointment of an arbitrator, or to comply with the award. Hence it was desirable to supply by statute the details required by the spirit and principle of the two sections of the Act of 1865, if such could be done without injury to the rights or property possessed by the persons or companies who might be interested in the railroads subject to these sections, or to any kindred provisions of statutes or contracts. The Act petitioned against, it is submitted, does not enlarge the principle of the two sections of the Act of 1865, or vary in any way the provisions of those sections, nor does it invade or destroy any rights possessed by any companies or persons whomsoever, excepting by depriving them of the power to obstruct the due and fair execution of sections 7 and 8 of the Act of 1865. It expressly reserves the rights of any company to the compensation to which such company may be entitled under any award that may be made, and therefore confers upon the petitioning company the same right and remedies as are possessed by any public creditor, and it may be fairly contended that sections 7 and 8 contemplated no other rights and remedies being given or reserved, because it gave to the government the option of paying for the railroad in provincial debentures. The statute petitioned against can be said to be very little more than a statute providing for the mode in which sections 7 and 8 of the Act of 1865 are to be carried into practical operation, and the mode provided is the one usually adopted in such cases. It is a matter of every day practice, when by contract or statute an arbitration is provided for, to provide, by a subsequent contract or statute, the mode in which the arbitrators shall be appointed, and their award enforced; and it is a matter of every day experience in the legislation of all the provinces, and of the Dominion, that the expropriation of property by a summary method is provided for, the right of compensation being reserved and provided for as it is in the statute petitioned against.

In relation to the statement contained in the 10th clause of the company's petition, the undersigned cannot but remark that the company's advisers have been under some serious misapprehension of the facts when they asserted that the statute petitioned against was introduced into the House of Assembly on the 13th April, 1881, without public notice, and was passed by the assembly on the same day, and that it was also passed by the legislative council on the same day, and assented to by his Honour the Lieutenant-Governor on the next day. It has never been the practice in the Nova Scotia legislature to give public notice of the introduction of a public bill, such as this unques-

tionably was. The bill was introduced (under the title under which it was finally assented to) by the leader of the government into, the House of Assembly on the 7th April, 1881, when it was read a first time, and ordered to be read a second time. On the 8th April, 1881, it was read a second time and committed to the committee of the whole house. On the 12th April, 1881, it passed the House in committee of the whole, and on the 13th April, 1881, it was read a third time, and sent to the legislative council for their concurrence. The legislative council passed the bill 13th April, 1881, and it was assented to the next day.

The undersigned is informed that the agent and representative of the Windsor and Annapolis Railway Company had notice that a bill to amend the Nova Scotia Railway Act of 1880 would be introduced long before the bill was actually introduced.

With respect to the 18th, 19th, 20th, 21st and 22nd sections of the company's petitions, the undersigned submits that the assertions there made are not relevant to the subject under discussion. The arbitration intended to be enforced by the statute petitioned against does not relate to or effect the branch line from Windsor to Windsor Junction, nor does the statute confer any rights or powers on the Nova Scotia government in respect to that branch, nor is it in any way applicable thereto. If the petitioning company should succeed in establishing any right in relation to the Windsor branch, that right must be acquired by the Nova Scotia government, either by contract or by valuation, and it is not intended to be invaded, and, the undersigned submits, will not be invaded, lessened or impaired by the statute sought to be disallowed. The litigation referred to in the petition as arising out of the position of the Windsor branch, is not in any way interfered with by the statute.

In conclusion, the undersigned submits that all the contentions made in the closing paragraph of the petition can be successfully controverted. The contention that the rights of bondholders and shareholders who have invested large sums of money on the faith that their rights and interests would be duly maintained and protected by law, will be invaded by this statute, is found to be unsustained when it is seen that these investments were made with distinct notice contained in the charter of the petitioning company, that the investments would be subject to sections 7 and 8 of the Act of 1865. The contention that it is contrary to equity and universal practice to deprive and expropriate the lawful owners, of their property, even for objects of public benefit, and without first effectually providing for, ascertaining, and paying the full value and compensation in respect to properties so taken, is surely unwarranted in its application to this statute, when it is considered that the right to value and compensation is secured by the statute itself, and by the statute of 1865, and when it is considered that the mode ascertaining the "full value and compensation" provided for in the Act of 1865 is left off unimpaired, and is practically the same as that usually applied in the expropriation of property for public purposes. Nearly all the public works of the province, including the Windsor and Annapolis Railway, have been constructed on lands expropriated, and only valued and paid for long after they had been in possession of, for the purposes for which they were expropriated.

All of which is respectfully submitted.

JOHN S. D. THOMPSON,  
*Attorney General.*

*General Manager Windsor and Annapolis Railway to the Hon. the Minister of  
Railways and Canals.*

WINDSOR AND ANNAPOLIS RAILWAY COMPANY,  
GENERAL MANAGER'S OFFICE, KENTVILLE, N.S., 1st November, 1881.

SIR,—On 1st August last I sent you a copy of a petition which my company had forwarded to the Secretary of State, praying that the Governor General in Council would disallow an Act of the Nova Scotia legislature, which purported to authorize the provincial government compulsorily to assume possession of my company's railway upon twenty-eight days' notice, and before either its value had been determined, or the price paid, as was provided in the charter.



The Attorney General of Nova Scotia prepared a report in answer to the said petition, which is very misleading and only deals with what he assumes to be general principles, avoiding the real and important points at issue. My directors have accordingly thought it proper to supplement their original petition by certain observations on the report of the provincial Attorney General, of which I send you a copy herewith.

The time occupied in communicating with my directors in England will account for the delay in sending in this document, and I take the liberty of requesting that when the matter comes to be disposed of, this document is made part of our case, and has consideration accordingly.

I have, &c.,

P. INNES,

*General Manager.*

*Reply of Windsor and Annapolis Railway.*

*To His Excellency the Governor General of the Dominion of Canada in Council :*

In the matter of the Act of the Nova Scotia legislature, assented to 14th April, 1881, intituled : " An Act to amend the Nova Scotia Railway Act, 1880."

Observations of the Windsor and Annapolis Railway Company on the report of the Attorney General of Nova Scotia, dated 31st August, 1881, on the company's petition for disallowance of the above Act.

In reply to the report of the Attorney General for the province of Nova Scotia, your petitioners desire to make the following observations :—

1. Even if your petitioners are bound to surrender their line to the government of Nova Scotia, as insisted on by the Attorney General, they are only bound to do so upon the terms of the 7th and 8th sections of 28 Vic., chap. 13. It was with full notice of, and in reliance on, those sections that the bondholders and shareholders laid out their money, according to the statement of the Attorney General himself, and what your petitioners object to in the Act petitioned against is, that it alters and renders nugatory the provisions of those sections.

2. Your petitioners feel bound to call the attention of the Governor General in Council to the very grave questions involved in the claim of the government of Nova Scotia, to assume the ownership of this railway, which the Attorney General has lightly passed over, after stating certain alleged general principles upon which the claim is founded. The British North America Act, by the joint effect of section 108 and schedule 3, vested in the Dominion all the property in railways belonging to the several provinces, and the intention is, it is submitted, clear that all rights over provincial railways, except such as were vested in private individuals or companies, should vest in the Dominion. The question whether rights, such as that now under consideration, passed to the Dominion government under those provisions, is of moment, not only to the Dominion and provincial governments, but to the other parties interested in them. It is submitted that the right in question was a contingent equitable right of property in the railway, and as such passed to the Dominion under the terms of the said section of the British North America Act. It need hardly be pointed out that if the right of purchase is now vested in the Dominion, the Act petitioned against would, upon all the principles maintained by the Dominion government in their litigation with the Windsor and Annapolis Railway Company, be *ultra vires* of the Nova Scotia legislature.

3. Your petitioners desire to point out that the Dominion government, in its dealings and litigation with your petitioners, has always claimed to act upon, and legislate with respect to the other portions of the charter under which your petitioners' railway was built, and they submit that that charter cannot be enforced partly by the Dominion and partly by the provincial government.



4. Further it appears, from the provisions of 28 Vic., chap. 13, that the power to assume possession of the railway granted to the provincial government by the 7th and 8th sections was granted to them as the owners of other portions of provincial railways already made, and to enable them to work the provincial railways as a whole if they thought fit. The other portions of the provincial railways which were vested in the provincial government, have admittedly been transferred to the Dominion government, and your petitioners submit that the right to purchase this section of the provincial railways, of which your petitioners are owners, must be vested in the Dominion government, or should otherwise be held to have lapsed, the object of the provisions having been rendered impossible by the Act of the Imperial legislature.

5. Even if the Nova Scotia government are entitled to avail themselves of the provisions of the 7th and 8th sections of 28 Vic., chap. 13, the great injustice that will be inflicted upon your petitioners by the Act in question, if sanctioned, sufficiently appears from the Attorney General of Nova Scotia's own statement, that if the company refuses to appoint an arbitrator, the arbitration provided by 28 Vic., chap. 13, secs. 7 and 8, cannot be carried out. The effect of the Act in question will be to deprive the Windsor and Annapolis Railway Company of any means of obtaining compensation, except under such an arbitration, and although the Act provides for the appointment of an arbitrator by the government, there is no means provided for your petitioners of enforcing the appointment of the third arbitrator by the principal Secretary of State for the colonies, nor is there any provision for the death or refusal to act of either of the arbitrators, or their failure to agree. Your petitioners, therefore, have no security under the Act that they will be able to obtain the award which is made a necessary condition of their obtaining any compensation. The bondholders and shareholders provided their money on the faith of the provisions that they should not be deprived of the railway without compensation having been first paid to them, and not upon the chance of successful issue of such an arbitration.

6. Even if the arbitrators should be appointed, and an award eventually made in accordance with the provisions of said sections, great hardship and injustice would still result to the Windsor and Annapolis Railway Company; for, while their income available for the payment of debenture-holders and shareholders would cease as soon as the railway was taken possession of by the government, the amount payable for compensation would not be available till the conclusion of the arbitration. Such an arbitration would in this case be necessarily protracted, for the value of the railway could not be ascertained till after the final determination of the litigation at present proceeding between your petitioners and Her Majesty's Attorney General for Canada. It is submitted that it is entirely erroneous to suppose that the value of the rights of your petitioners in the Windsor Branch could be separately valued and purchased, as suggested by the Attorney General of Nova Scotia. The value of the Windsor and Annapolis Railway itself must very largely depend upon whether it is merely a local line, having no access beyond Windsor, and to the Intercolonial Railway, or whether it has running powers over the Windsor Branch and Trunk line into Halifax.

7. It is submitted that the above considerations show that the Attorney General for Nova Scotia is in error in representing the Act in question as merely providing for the mode of carrying out an arbitration already existing. Such an Act would merely give additional powers and privileges to the parties concerned; the Act petitioned against takes away from the Windsor and Annapolis Railway Company, the right to hold their railway till its value has been paid to them, without making any compensation to them for the loss of so valuable a right. It is further submitted that the Act fails to provide any efficient means of appointing the arbitrators and enforcing their award, which are its alleged objects.

8. Your petitioners further submit that the Act in question is wholly unnecessary—that there is no ground for saying that the Windsor and Annapolis Railway Company are unwilling to enter into reasonable arrangements with the provincial government, for the transfer to them of their railway for a fair consideration, and if they were so, it is submitted that the said railway could be compelled by mandamus to appoint an arbitrator, under the provisions of 28 Vic., chap. 16, secs. 7 and 8, and that

the provincial government would not meet with the difficulty which your petitioners might, in obtaining the appointment of the third arbitrator by the imperial government. If even it be necessary to avoid the delay of the arbitration and give statutory powers to enable the provincial government to take immediate possession of your petitioners' railway, this might be done without inflicting the hardships complained of, by an Act containing provisions analogous to those of the Land Clauses Consolidated Act, 1845 (8 Vic., c. 18, s. 85), and providing that the government should pay to your petitioners the value of their property, and all its appurtenances, rights, &c., as estimated by competent, independent persons, before taking possession of it; or by an Act corresponding with the Acts under which the property of the British telegraph companies were acquired by the imperial government, which contained clauses defining in principle the amount of compensation to be paid, which had previously been agreed upon with the companies. In either case the Act should provide the company with the means of asserting their right to any sum claimed by them, in addition to the amount paid by the government, by an arbitration under conditions which should secure to the company the means of obtaining a valid award.

9. Your petitioners desire to point out, that by the admissions of the Attorney General for Nova Scotia, the Act was carried through both Houses, and received the assent of the Lieutenant-Governor in seven days. Your petitioners only became aware of it on the day before it received the assent, and their agent was then expressly assured by the Honourable S. H. Holmes, on the part of the provincial government, that it did not affect the company. Your petitioners had, therefore, no opportunity of pointing out, during the passing of the Act, the injurious effect that its provisions would have been upon their property, and so obtained such modifications as would have protected their rights in the premises.

All of which is respectfully submitted.

THE WINDSOR AND ANNAPOLIS RAILWAY CO.,

Per P. INNES,

*General Manager.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 6th March, 1882.*

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 2nd March, 1882.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report, with respect to an Act passed by the legislature of Nova Scotia, in the year 1881, intituled : "An Act to amend the Nova Scotia Railway Act, 1880," as follows :

The Windsor and Annapolis Railway Company have petitioned for the disallowance of this Act on the grounds mentioned in their petition.

A copy of the petition was transmitted to the government of Nova Scotia for their remarks, and a reply has been received signed by the Attorney General.

A copy of this reply was duly transmitted to the Windsor and Annapolis Railway Company, and the observations thereon by that company have been received.

After consideration of the matter, and the various questions involved, the undersigned is of opinion that the power of disallowance should not be exercised with respect to this Act, and he recommends accordingly.

A. CAMPBELL,

*Minister of Justice.*

## NOVA SCOTIA—45TH VICTORIA, 1882.

(4TH SESSION—27TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th April, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th April, 1882.

*To His Excellency the Governor General in Council :*

Upon the reference to the undersigned of the Acts passed by the legislature of the province of Nova Scotia at its last session, intituled respectively: Chapter 20. "An Act for the consolidation of Nova Scotia Railways."

Chapter 21. "An Act to amend the Nova Scotia Railway Act of 1880, and the Act in amendment thereof."

The undersigned has the honour to report,—

That he communicated with the Minister of Railways and Canals, inquiring whether, in the opinion of the Minister, the recitals in the first named Act, relating to the railways owned by the Dominion government, contained statements respecting the rights of the province not in accord with the rights admitted to exist by this government; also, whether, in his opinion, the policy of the Act referred to, conflicts in any way with the railway policy of the Dominion.

A reply has been received, that in the opinion of the Minister of Railways and Canals there is nothing in the recitals of the Act to which exception need be taken, and that he does not consider that the policy of the Act in any way contravenes that of the Dominion government.

The undersigned has the honour to recommend that the two Acts referred to be left to their operation.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 12th October, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th October, 1882.

*To His Excellency the Governor General in Council :*

The undersigned begs leave to report that he has had under consideration a petition of the Windsor and Annapolis Railway Company to your Excellency in Council, praying for the disallowance of the Act of the legislature of Nova Scotia, passed on the 27th February last (chap. 20), intituled: "An Act for the consolidation of the Nova Scotia Railways," and the petition of the stockholders, likewise praying for the disallowance of the same, which were conferred to him by your Excellency's Council.

The Act in question was considered on the 24th April last, upon a report from the undersigned made after communication with the Minister of Railways and Canals, and an Order in Council was passed, allowing the Acts in question to be left to their operation.

The undersigned recommends that no further action be taken in the matter, and that the substance of this report be communicated to the Windsor and Annapolis Railway Company, and to the debenture stockholders of the company.

A. CAMPBELL,  
*Minister of Justice.*



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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 24th February, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th February, 1883.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the following Acts passed by the legislature of the province of Nova Scotia in the session of 1882, recommends that they be left to their operation.

Chapters 1 to 19, 22 to 60, 62 to 72 and 74 to 90.

In regard to chapter 20, intituled: "An Act for the consolidation of the Nova Scotia Railways," and chapter 21, intituled: "An Act to amend the Nova Scotia Railway Act of 1880, and the Act in amendment thereof," the undersigned observes that they were left to their operation by Order in Council of the 24th April last.

Subsequently the Windsor and Annapolis Railway Company petitioned for the disallowance of chapter 20, but by Order in Council of the 6th October last it was determined to take no further action in respect thereof.

The undersigned recommends that the attention of the Lieutenant-Governor of Nova Scotia be called to the provisions of chapter 61, intituled: "An Act to incorporate the Eastern Development Company" (Limited), and chapter 73, intituled: "An Act to incorporate the Pictou Oil Company."

These Acts purport to give the companies incorporated by them very large and general powers, among others to build, own and possess ships and steamboats to carry merchandise, supplies and products to and from the site of the company's operations, and for all other purposes.

Admitting for the present that the incorporation of a company to own ships within the province is a provincial object, the authority should be given with such limitations as not to conflict with section 91, paragraph 29, and section 92, paragraph 10, of the British North America Act, 1867.

A. CAMPBELL,

*Minister of Justice.*

## NOVA SCOTIA—46TH VICTORIA, 1883.

(1ST SESSION—28TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 23rd May, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd May, 1883.

*To His Excellency the Governor General in Council :*

The undersigned has had under consideration a petition of the Nova Scotia Railway Company, asking for the disallowance of two Acts lately passed by the legislature of the province of Nova Scotia, and intitled respectively : "An Act respecting Eastern Extension Railway," and "An Act to authorize the raising of a Provincial Loan and for other purposes." He has also had under consideration a memorial from Messrs. White and Fielding, members of the government of Nova Scotia, at present in Ottawa on public business, requesting that the said Acts be confirmed.

Having carefully considered the Acts in question, the undersigned is of opinion that they are within the legislative authority of the legislature of Nova Scotia.

On inquiry he is informed by the Minister of Railways and Canals that there is no objection to them on grounds touching the general railway policy of the government, and he would, therefore, respectfully recommend that they be left to their operation.

The undersigned further recommends that in case this report is approved, the Nova Scotia Railway Company and Messrs. White and Fielding, be informed of the action taken.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 18th October, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th September, 1883.

*To His Excellency the Governor General in Council :*

Upon the reference by a petition from Lieutenant General Domville upon the subject of an Act passed on the 19th April last by the legislature of the province of Nova Scotia, and intitled : "An Act to amend an Act to incorporate the Spring Hill and Parrsboro' Coal and Railway Company, and the Acts in amendment thereof," and "to provide for winding up the affairs of said company ;" the undersigned has the honour to report as follows :—

The prayer of the petition is that your Excellency will be pleased to withhold your assent to the Act in question. As there is nothing in the Act reserving it for your Excellency's assent, the undersigned assumes that the intention of the petitioners is to ask for the disallowance of the Act. The undersigned is of opinion that the petitioners should be asked to state if such is the proper construction to be placed on the petition.

The undersigned recommends that a copy of the petition be sent to the Lieutenant-Governor of Nova Scotia for any remarks his government may think proper to make thereon, and for communication with the directors of the company, in order that they may be afforded the opportunity of making such answer thereto as they may desire.

All of which is respectfully submitted.

A. CAMPBELL,  
*Minister of Justice.*

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 6th May, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th April, 1884.

*To His Excellency the Governor General in Council :*

The undersigned begs leave to submit his report upon the Acts passed by the legislature of the province of Nova Scotia in the session of 1883 :—

Chap. 19. "An Act to authorize the raising of a Provincial Loan and for other purposes."

Chap. 21. "An Act respecting Eastern Extension Railway ;" were by Order in Council of the 23rd May, 1883, left to their operation.

Chap. 85. "An Act to amend an Act to incorporate the Spring Hill and Parrsboro' Coal and Railway Company and the Acts in amendment thereof, and to provide for winding up the affairs of the company."

Two petitions have been received asking for the disallowance of this Act, the first from the late James W. Domville, of Rothsay, province of New Brunswick, Lieutenant General, and the second from Mr. Richard Hunt, of Prince County, Summerside, province of Prince Edward Island.

There has also been correspondence relative to this Act with the Lieutenant-Governor of Nova Scotia.

Lieutenant General Domville's petition has been withdrawn by his executors, and it is unnecessary now to consider Mr. Hunt's petition in view of the fact that at the present session of parliament an Act has been passed, ratifying and confirming the Act of the Nova Scotia legislature and all acts done and proceedings taken thereunder, and declaring that all powers, trusts and provisions thereby given, conferred and enacted for the winding up of the said company and for selling and disposing of the company's property, are as valid and effectual for all purposes therein mentioned, as if the same had been enacted by the parliament of Canada.

In view of these facts, the undersigned recommends that this Act be left to its operation.

The undersigned further recommends that the remaining Acts of the said session be left to their operation. Chapter 1 to 18, 20, 22 to 24, 84, 86, 87.

A. CAMPBELL,  
*Minister of Justice.*



## NOVA SCOTIA—47TH VICTORIA, 1884.

(2ND SESSION—28TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th September, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st September, 1884.

*To His Excellency the Governor General in Council.*

The undersigned having had under consideration chapter 3 of the Acts passed by the legislature of the province of Nova Scotia, in the 47th year of Her Majesty's reign, intituled: "An Act respecting a Provincial Loan," respectfully recommends that the Act be left to its operation.

J. H. POPE,  
*For the Minister of Justice.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 4th April, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th March, 1885.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon the Acts passed by the legislature of the province of Nova Scotia in the year 1884.

The undersigned having considered the Acts mentioned in the schedule attached hereto, respectfully recommends that they be left to their operation.

Chap. 3. An Act respecting a Provincial Loan; was left to its operation by Order in Council dated 6th September last.

Chap. 9. An Act to impose duties on licenses issued under the Dominion Liquor License Act, 1883.

The undersigned had occasion to examine this Act a short time after it was passed, and came to the conclusion that it should be left to its operation. He sees no reason to change the view which he then entertained, and recommends that the power of disallowance be not exercised in respect of this Act.

Chap. 19. An Act to amend chapter 137, Revised Statutes, 3rd series "of the relief of insolvent debtors."

This Act makes provision with respect to the discharge of insolvent debtors confined in jail under the ordinary process of the courts. Some difference of opinion exists with respect to the authority of the legislature over this subject. In Ontario, in the revision of their statutes, the laws on this subject were consolidated, as being within the legislative authority of the province. In New Brunswick, on the other hand, in the case of *Regina vs. Chandler* (1 Han., 548) it was held that legislation of this class was *ultra vires* of a provincial legislature, and in the consolidation of the statutes of New Brunswick, 1877, the Acts of that province relating to the subject were not consolidated, but were printed in an appendix.

In Nova Scotia the Acts relating to Insolvent Debtors were not included in the consolidation of 1873, although the Act had been amended by the legislature of Nova Scotia in 1868.

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In view, however of this difference of opinion, and believing that no inconvenience can arise from so doing, the undersigned recommends that the Act be left to its operation.

Chap. 25. An Act to improve the administration of justice.

The undersigned recommends that this Act be left to its operation.

At the same time he desires to observe that some of the provisions of section 3, relating to the qualification of the judges, the offices they may hold, and their precedence, and the oaths to be taken by them are, in his opinion, not within the authority of the legislature, and very considerable doubt exists with respect to others. The same powers, however, have been exercised by other legislatures, and as the provisions in regard to them form part only of an Act to "improve the administration of justice" of general importance, the disallowance of which would probably give rise to much inconvenience, he recommends that the Act be left to its operation.

The undersigned further recommends that if this report is approved, the Lieutenant-Governor of Nova Scotia be informed that it is the intention of his Excellency to leave to their operation the Acts (chapters 1, 2, 4 to 8, 10 to 18, 20 to 24, 26 to 81), and also those mentioned in this report.

All of which is respectfully submitted.

A. CAMPBELL,

*Minister of Justice.*

## NOVA SCOTIA—48TH VICTORIA, 1885.

(3RD SESSION—28TH GENERAL ASSEMBLY.)

*Petition of Mrs. Maria Kearney with respect to Chapter 31.**To His Excellency Sir Henry Charles Keith Fitzmaurice, Marquis of Lansdowne, and Governor General of Canada.*

The petition of Maria Kearney, of Dartmouth, in the county of Halifax and province of Nova Scotia, humbly sheweth :

That her father, Andrew McMinn, died in the year 1838, having first made his last will and testament, a copy of which is hereunto attached, and which will was afterwards duly proved and registered in the Probate Court at Halifax, where it still remains registered. Your petitioner was of the age of about two years at the time of her father's death, but was not born when the said will was made. Administration with the will annexed was obtained by Mary McMinn, your petitioner's mother, of the estate of your petitioner's father. By the said last will and testament a property of 160 acres of land at Dartmouth aforesaid was devised to the said Mary McMinn during her life, with remainder to any child or children the testator might have by his then marriage. Your petitioner was the only child of that marriage, and became entitled to the said property on the death of her mother, who died in 1881. Shortly after the said Mary McMinn became administratrix, wishing to obtain the absolute control and ownership of said property, she applied under pretense of debts being due by the testator, to the Governor and Council of Nova Scotia, who then alone had power to order the sale of the property of deceased persons, for permission to sell the same, but the Governor in Council refused to order such sale or any sale thereof. She afterwards instituted proceedings in the Chancery Court of Nova Scotia, and, having concealed from the court the title of your petitioner, fraudulently obtained an order from the Master of the Rolls to sell the said property, and under such order sold and became the purchaser thereof. Your petitioner contends that the Chancery Court held no jurisdiction over the property even if the Governor and Council had not been applied to ; that the Governor and Council having refused to order a sale, no other court could interfere ; that the Master of the Rolls could not make a valid order of sale ; that no hearing of the cause ever took place, nor any final decree ever made ; that your petitioner's title as devisee was concealed and never set out in the writ ; that no sale or deed was ever confirmed or any decree enrolled ; that these and many other grounds exist making the sale of said property as to your petitioner nugatory and void. At the time of such sale your petitioner was still a mere infant. Immediately upon the accruing of your petitioner's title on the death of her mother in 1881, she brought an action of ejectment in the Supreme Court of Nova Scotia to recover a portion of her said property against the Honourable Samuel Creelman a Member of the Legislative Council of Nova Scotia, and against Alexander P. Reid, physician, which suit was decided adversely to your petitioner, but which has been appealed to the Supreme Court of Canada. Such decision was, however, given without your petitioner having been heard.

To make good the title to this property in those holding it adversely to your petitioner, an Act was passed during the session of the legislature of Nova Scotia just closed, couched in general language, viz. : making good all chancery titles, but such general terms were used to conceal the real intention of the Act which was passed solely to prevent your petitioner from recovering the property claimed in her said suit, and of which she has been deprived by the above-mentioned irregular, fraudulent and void proceedings, instituted and conducted while she was a mere infant, but never co n



cluded. Your petitioner was not aware of any measure having been before the Nova Scotia legislature of this character, and only discovered the fact after the close of the session ; and not having had any notice of it, she was unable to offer any opposition thereto, and the said Act passed wholly unknown to her. The said Honourable Samuel Creelman was a member of the legislative council of Nova Scotia, and voted upon and assisted in the passing of said Act, though one of the defendants in the said suit brought by your petitioner to recover the said land. Your petitioner believes that with the exception of said Samuel Creelman, but few, if any of the members of either branch of the legislature of Nova Scotia were aware of the true and real intention of the said Act. The said Act is entitled "An Act to confirm sales of land under order of the Supreme or Equity Court."

Your petitioner is a widow with eight young children depending upon her for support, and if the said Act should become law, great and manifest injury and injustice would be done to her and her children, and she humbly prays that your Excellency will refuse your assent to and disallow the said Act either in whole or in so far as it will apply or include or bear upon the property or title thereof claimed in her said suit against the said Honourable Samuel Creelman and Alexander P. Reid.

And your petitioner as in duty bound will ever pray.

MARIA KEARNEY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General on the 16th day of May, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 7th May, 1885.

*To His Excellency the Governor General in Council:*

The undersigned to whom was referred the petition of Maria Kearney, praying for the disallowance of an Act passed by the legislature of Nova Scotia at its last session (1885), chapter 31, and intitled: "An Act to confirm sales of land under order of the Supreme or Equity Court," has the honour to recommend that copies of the petition and accompanying papers be transmitted to the Lieutenant-Governor of Nova Scotia, with a view to obtaining an authenticated copy of such Act, and also of affording his government an opportunity of making any observations with regard to the said Act and petition that they think fit to make.

A. CAMPBELL,  
*Minister of Justice.*

*Petition of Mrs. Maria Kearney with respect to Chapters 23 and 31.*

*To His Excellency Henry Charles Keith Fitzmaurice, Marquis of Lansdowne, and Governor General of Canada.*

The petition of Maria Kearney, of Darmouth, in the county of Halifax and province of Nova Scotia, humbly sheweth:

That she addressed a petition a few days ago to your Excellency, praying that your Excellency would disallow or refuse your assent to an Act of the legislature of Nova Scotia for reasons contained in the said petition. Since the forwarding of said petition your petitioner has discovered that another Act of the provincial legislature, intitled: "An Act to enable the government of Nova Scotia to appropriate lands for public purposes," was also passed during the last session, and though couched in general language, as if to apply universally, was intended solely to take lands from your petitioner under circumstances which she contends are wholly unjustifiable. The circumstances are these; In the year 1859 the provincial government were constructing a building known as the hospital for the insane, and needed a supply of water for it, which could be obtained by carrying water pipes through land which had been devised to your petitioner by her father, subject to the life interest of her mother, then living.

An Act of parliament was consequently passed, enabling the government to carry a set of pipes through this property, which was afterwards done. An ample supply of water was thus obtained and continued until about a year ago, when, without her permission, the set of pipes so laid with such water supply were handed over to a sugar refinery in the neighbourhood. The consequence of this wrongful as well as injudicious bartering away of this valuable right was that this institution was left without water except what it could obtain by sufferance from the sugar refinery. To meet the difficulty so recklessly brought on, the government of Nova Scotia, unsanctioned by any law, with force and violence entered the land of your petitioner and to the extent of over a thousand feet, sank a deep trench through the same, and laid therein a new set of pipes, thereby unjustly acquiring a second supply of water. An action was thereupon instituted by your petitioner before the passing of this Act, to obtain a removal of this second set of pipes out of this property which is now in her possession, by the death of her mother in 1881, and this action is at the present moment on the list of trials of the Supreme Court of Canada, to which court it has been removed by appeal from the Supreme Court of Nova Scotia.

Your petitioner contends that the said Act concealed under general terms aims at the destruction of this suit, by obtaining, by Act of parliament, property in litigation, which would be an unconstitutional exercise of legislative power. Your petitioner further contends that to allow her property to be again invaded and forcibly taken from her for a purpose once already satisfied by an adverse appropriation of her property, would be a proceeding unexampled in hardship, wholly unjust in principle, and unwarranted by any precedent however arbitrary.

Your petitioner further submits that as the provincial government of Nova Scotia are constructing no public works, and have no intention of doing so, and possess none except the building known as "the province building" and the building known as the hospital for the insane, no such Act is required, and to place such unlimited power of taking lands in the hands of the Council of the province, as that Act proposes, would be a most arbitrary exercise of legislative power.

Your petitioner also submits that, except in cases of the most pressing necessity which do not exist in Nova Scotia, the land of the subject should not be wrested from him until he would first receive compensation, but this Act intends the contrary, and this right of the subject to hold his land generally till he voluntarily parts with it, or is paid for it, when he is to be adversely deprived of it, applies most particularly to the government of Nova Scotia taking lands; for as the government cannot be impleaded in any court or brought to account except through their agents or servants whom this Act screens from liability, the party deprived of his land under this Act should not be deprived thereof before compensation made in any case. This Act it is true refers to arbitration and makes a sort of plausible flourish in this way, but arbitration could neither be enforced against the government nor any award obtained by arbitration, and every proprietor would, after being deprived of his land be at the mercy of the government for compensation.

Your petitioner further submits that the legislature of Nova Scotia, when independent and exercising control over the whole province and over extensive public works, never attempted to pass a general Act to appropriate property, but brought each particular case before parliament in an open and public manner so as to give an opportunity to parties interested to be heard before a committee of the Assembly, and in order to have it sanctioned or rejected upon its merits, and that this is the first attempt of the kind ever made and it is contrary to the practice and course of the legislature of Nova Scotia since the foundation of the province. Annexed hereto are copies of both said Acts duly certified.

Your petitioner therefore most respectfully and humbly prays your Excellency to refuse your assent to the Act intituled: "An Act to enable the government of Nova Scotia to appropriate lands for public purposes," as well as to the Act previously petitioned against.

MARIA KEARNEY,

By her Solicitor,

T. J. WALLACE.

OTTAWA, 8th day of May, 1885.



*His Honour the Lieutenant-Governor to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, HALIFAX, N.S., 10th July, 1885.

SIR,—Referring to my despatch, dated 26th June last, acknowledging yours of the 9th ultimo, I have now the honour to inclose the report of my Attorney General upon the Acts of the legislature of Nova Scotia, passed at the recent session of 1885, intituled: "An Act to confirm sales of land under order of Supreme and Equity Courts," and "An Act to enable the government of Nova Scotia to appropriate lands for public purposes."

I have, &c.,

M. H. RICHEY,  
*Lieutenant-Governor.*

*Honourable Attorney General White to Provincial Secretary.*

HALIFAX, 22nd June, 1885.

SIR,—I have perused the two memorials of Maria Kearney, praying for the disallowance, by his Excellency the Governor General, of two Acts of the legislature of Nova Scotia passed during the recent session of 1885, the first entitled: "An Act to confirm the sales of land under order of Supreme and Equity Courts," and being chapter 31 of the statutes of 1885, the second: "An Act to enable the government of Nova Scotia to appropriate lands for public purposes," and being chapter 23 of the Acts of 1885.

As you are aware, chapter 31 was submitted by Mr. James Thompson, of the firm of Thompson & Bullock, solicitors, of this city, with a view to remedying the legislation with regard to perfecting titles under foreclosure of mortgage.

This government had nothing whatever to do with the introduction of the Act, though Mr. Longley and myself entirely concurred in the necessity for its introduction, on its being presented to us by Mr. Thomson, and I find that he is as much surprised as we all are to discover that Maria Kearney, or her counsel, should consider that the existence of her suit now pending in the courts in any manner prompted its passage.

I inclose herewith Mr. Thomson's letter written to me after he had perused Maria Kearney's petitions. In regard to the alleged trespass, I may say that no portion of the waterpipe trench passes through lands of Maria Kearney, unless, indeed, the public highway leading from the town of Dartmouth to Cow Bay and other places, is discovered to be her private property.

In October, 1884, an action of trespass was instituted at the suit of said Maria Kearney, against Dickson and Ryan, two employees of the provincial lunatic asylum, who were engaged in reopening, by direction of the government, the trenches in which were laid the waterpipes leading from Maynard's Lake to the asylum. The trenches were cut originally in the year 1858, and the trespass complained of is for opening them on the public road which intersects Maria Kearney's property. After issuing the writ in her action of trespass, she obtained an injunction to restrain the said employees of the government from prosecuting the work of putting in a new pipe, which injunction was without delay discharged, on application to the court at Halifax, which court was unanimous in its judgment dissolving said injunction. From this judgment Mr. Wallace appealed to the Supreme Court of Canada, and on hearing said appeal the said Supreme Court unanimously sustained the judgment delivered by the Supreme Court of Nova Scotia, and gave judgment quashing said appeal.

In regard to chapter 23, of the Acts of 1885, I may be permitted to remark that such an Act is essential, if the public works of the province are to be proceeded with uninterruptedly. It is a transcript of the Dominion Act of 1868, so far as it goes, and in



providing for the accommodation of the public interests due regard is had for the protection of private individuals. But were it otherwise, the contention of Mr. Wallace on behalf of Maria Kearney is very inaccurate, as the passage of this Act cannot, in my opinion, affect in any manner suits instituted, prior to its passage and now *pendente lite*.

Attached hereto are certified copies of both statutes.

I have, &c.,

A. J. WHITE,  
*Attorney General.*

*Mr. James Thomson to the Hon. the Attorney General.*

HALIFAX, 18th June, 1885.

DEAR SIR,—In 1832 (3 Will. IV., chap. 52) an Act was passed in the legislature of this province declaring and enacting that all sales and conveyances made or thereafter to be made by a master of the court of chancery should, when confirmed, be good and effectual for transferring to the purchasers the interest directed in the decree to be sold.

It is evident that at that early date the court of chancery had been in the habit of making decrees for the sale of real estate, and having the deeds executed by a Master of the Supreme Court.

This practice was continued until 1850. Upon the revision and consolidation of the statutes in that year it was enacted in the Act relative to the Court of Chancery (chapter 127, section 6: "All conveyances of land made in pursuance of any order or decree of the court shall be effectual when confirmed by the court for conveying such land, without the persons whose interests are conveyed being made parties thereto.")

In 1855 an Act was passed "abolishing the court of chancery and conferring equity jurisdiction on the supreme court" (chap. 28). While this Act repealed chapter 127 of the Revised Statutes it omitted any mention of section 6, relative to the sale and conveyance of real estates. It was evidently inadvertently omitted. The practice was never changed in the court when equity jurisdiction was then conferred upon it. The attention of practitioners does not appear to have turned to this omission in that law. Hundreds of mortgages have since been foreclosed, and sales made by the sheriffs or masters under decrees of the Court of Equity, and deeds made to the purchasers at such sales.

As you are aware I myself have foreclosed a considerable number, and have passed many titles depending on the validity of such sale.

While lecturing on real property at the law school, the omission was brought to my notice, and I hastened to remedy the defect, and prepared the Act in question.

I had not in view any particular case, nor was I aware that it would in any way affect the cause of Maria Kearney.

I have, &c.,

JAMES THOMSON.

*Secretary Department of Railways and Canals to Deputy Minister of Justice.*

DEPARTMENT OF RAILWAYS AND CANALS, OTTAWA, 12th February, 1886.

SIR,—I am directed to refer to you, for the necessary action thereon, a petition addressed to his Excellency the Governor General, dated the 4th February instant, from Mr. Norvin Green, by his attorney the Hon. W. McDougall, praying, for the reasons stated, that his Excellency will be pleased to disallow a certain Act, passed by the

local legislature of the province of Nova Scotia, chapter 39, declaring a certain draft-agreement, dated the 27th July, 1883, purporting to have been made by and between the North American Construction Company of the one part, the Great American and European Short Line Railway Company of the second part, and William Stewart and W. H. Chisholm, trustees, of the third part, as a security to the sub-contractors of the said North American Construction Company for certain balances due them by the said construction company—to be valid and binding deed.

With regard to paragraphs 7 and 8 of the above petition, I am instructed to say that the reason why the proposed contract between Her Majesty and the Montreal and European Short Line Railway Company has not been fully executed is, that the said company has failed to pay outstanding claims of the said sub-contractors.

I am, &c.,

A. P. BRADLEY,  
*Secretary.*

*Petition of Mr. Norvin Green to the Governor General, re Chapter 39.*

*To His Excellency the Marquis of Lansdowne, Governor General of Canada, &c., &c., &c. :*

The petition of the undersigned, Norvin Green, of the city of New York, president of the Montreal and European Short Line Railway Company, humbly sheweth :

1. That your petitioner subscribed for and now holds a large amount of the capital stock of a railway company incorporated by an Act of the Parliament of Canada, being chapter 73 of the session of 1882, with power to construct a railway from Cape North, in the Island of Cape Breton, to the strait of Canso, and from New Glasgow (in Nova Scotia,) to Oxford, Amherst or some suitable point of intersection with the Intercolonial Railway, and thence by the use of, or connection with, other lines through the province of New Brunswick, the State of Maine and the province of Quebec, to establish railway communication with Montreal.

2. That by an Act of the same parliament, passed in the session of 1884, the name of the said company was changed and was thereafter to be known as "The Montreal and European Short Line Railway Company," with power to construct a line from Sydney or Louisburg, in Cape Breton, and also to construct a line from New Glasgow along the north shore of Nova Scotia, through Moncton and Fredericton, in New Brunswick, to a point on the New Brunswick Railway between Debec and McAdam's Junction, and "for the purpose of making the railway line and connection with the city of Montreal more direct," were empowered to "hold, acquire and maintain a part thereof across any part of the state of Maine" or intervening states, so far as might be consistent with the laws of the said state or states.

3. That the said last mentioned Act, which received the royal sanction from your Excellency, 19th April, 1884, expressly declared that your petitioner's company (which had already secured the right of way and expended large sums of money in surveys and construction in Nova Scotia) should under its new name and enlarged powers, "enjoy all the franchises and privileges and hold all the rights and assets, and be subject to all liabilities" which had heretofore "attached to the Great American and European Company."

4. That the time limited by the Act of incorporation for the commencement of the construction of the lines therein mentioned, expired in the month of April of last year, and the time limited for the completion of the same will not expire until April, 1889.

5. That no time is limited by the amending Act of 1884, either for the commencement or the completion of the line from Sydney or Louisburg to Canso, or the line from New Glasgow to Moncton and Fredericton, and thence through the state of Maine to Montreal.



6. That all the rights, powers and franchises granted to your petitioner's company in and by their Act of incorporation (except as modified and extended by the amending Act of 1884) are still possessed and enjoyed, and held by the company as a subsisting corporation, without any default or forfeiture, under the terms and provisions of the said Acts or either of them.

7. That, under and by virtue of an agreement dated 9th May, A.D. 1884, between Her Majesty (represented by the then Minister of Railways, Sir Charles Tupper) and the company, the latter became entitled to certain subsidies which parliament had granted in aid of their said railway, to be paid from time to time on the completion of ten mile sections thereof, in cash, or by guarantee of bonds at the option of the company.

8. That serious embarrassments and delays have been caused to your petitioner's company by the refusal of the present Minister of Railways, to recognize or to act upon the contract made by Sir Charles Tupper with the company, although the said contract was duly signed by him, sealed with his official seal, and countersigned by the secretary of the department, as required by law.

9. That your petitioner is advised and believes that the corporate rights, franchises and property of your petitioner's company, under the said Acts of the Canadian parliament, are still good and valid in law.

10. That prior to the passing of the Act of 1884, and the making of the agreement of 9th May, 1884, a certain draft agreement, dated 27th July, 1883, purporting to have been made by and between the North American Construction Company of the one part, the Great American and European Short Line Railway Company of the second part, and William Stewart and W. H. Chisholm, trustees, of the third part, as a security to the sub-contractors of the said North American Construction Company, for certain balances due them by the said Construction Company, was signed at Pugwash, in Nova Scotia, by an officer of the Great American and European Short Line Company, on behalf of both the said companies, with the intent that the same if approved by the said companies and executed by them, would then become and be valid and binding.

11. That the said draft agreement of 27th July, 1883, was wholly unauthorized by the said Great American and European Short Line Railway Company, and has never been approved, signed or sealed by that company, or by any person or persons authorized to deal with, or bind the property, assets, or franchises of the same, in Nova Scotia or elsewhere.

12. That with full knowledge of these facts the provincial legislature of Nova Scotia, on the 24th day of April, 1885, passed an Act which declares the said unauthorized draft or writing, a valid and binding deed, as if the same had been duly approved and executed by the said companies, and vests, or purports to vest, all the property and assets of your petitioner's company in Nova Scotia, in two persons, called trustees, and authorizes or purports to authorize the sale of all the said property and assets, "particularly the road-bed, right of way, rails, sleepers, rights, privileges and franchises connected with the said line of railway, and the interest of the said company in the subsidy granted to it by the Dominion government," to third parties without the privity or consent of your petitioner's company.

13. That the said Act contained a proviso that the same "should have no force or effect until published in the "Royal Gazette" by order of the Governor in Council."

14. That it appears from the "Royal Gazette" of 6th January, 1886, a copy of which is annexed hereto, that the said Act, chapter 39, of 24th April, 1885, has been published therein by order of the Governor in Council.

15. Your petitioner submits for your Excellency's consideration that, under the facts and circumstances herein set forth, the said Act of the legislature of Nova Scotia, chapter 39, intitled: An Act to confirm and give effect to an indenture bearing date the 27th day of July, 1883, and purporting to be made between the North American Construction Company of the first part, the Great American and European Short Line Railway of the second part, and William Stewart and W. H. Chisholm of the third



part, and also purporting to be executed for said companies by Charles L. Snow," ought to be disallowed by your Excellency, as *ultra vires* of the constitutional power and jurisdiction of the said legislature.

16. Your petitioner is advised that it is not competent for a provincial legislature to amend, vary, or repeal any Act of the Dominion parliament relating to matters within its constitutional jurisdiction, or to alter, or validate agreements or contracts dealing with the property and franchises of a Dominion corporation.

17. Your petitioner respectfully represents to your Excellency that he, and a majority of his co-shareholders, are citizens of the United States; that by the comity which now happily exists between the said United States and the Dominion of Canada, they have been led to believe that the rights they have acquired, and the capital they have invested in the province of Nova Scotia will be recognized and protected by your Excellency, with the same justice and impartiality that would be extended to them, if they were citizens and subjects of Her Majesty domiciled in Canada.

Your petitioner, therefore, humbly prays that your Excellency will be pleased to disallow the said Act, chapter 39, A.D. 1885, of the legislature of Nova Scotia, before the expiration of one year from the passing thereof.

NORVIN GREEN.

By his attorney,  
WM. McDUGALL.

OTTAWA, 4th February, 1886.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th August, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 9th August, 1886.

*To His Excellency the Administrator of the Government in Council :*

The undersigned has the honour to submit his report on the Acts of the General Assembly of Nova Scotia, passed in the session held in the year 1885.

1. Having carefully considered the Acts (chapters 2 to 30, 32 to 38, 40 to 71, 73 to 85, 88 to 115,) the undersigned recommends that they be left to their operation.

2. By chap. 1, intituled: "An Act respecting the fifth series of the Revised Statutes," the Revised Statutes of Nova Scotia, fifth series, with certain amendments are confirmed, and declared to be legal and valid.

With respect to the laws contained in this volume (Revised Statutes of Nova Scotia, fifth series,) which constitute but one chapter, the undersigned desires to observe :

(1.) Section 19 and the following sections of chapter 3, "Of the composition, powers and privileges of the House," are a consolidation of 39 Vic. (1876), chap. 22, to which Mr. Blake, then Minister of Justice, directed attention to his report of the 13th November, 1876. It was pointed out in that report and the subsequent correspondence, that similar Acts passed by the legislatures of Ontario and Quebec had been disallowed, and the attention of the Lieutenant-Governor of Nova Scotia was called to the Act, with a view of its being repealed before the time for disallowance had expired. The Act was not repealed by the legislature of Nova Scotia, and the time within which it could have been disallowed expired, without any action being taken by the Governor General in Council.

It is also to be observed that a similar Act passed by the legislature of Manitoba, was disallowed in September, 1874, and that in 1873 the legislature of British Columbia repealed a similar Act, passed in 1872, to avoid the necessity of its disallowance. The Act of the legislature of Ontario referred to was disallowed after the law officers of England has expressed the opinion that it was *ultra vires*.

Under these circumstances, the undersigned would not hesitate to recommend the disallowance of this chapter if it constituted an Act in itself, but as it is only a portion of an important Act, embodying substantially the whole of the public law of the province, which is within the authority of the legislature, a grave difficulty is presented.

It could be urged that the legislature has had ample notice, and that it would fairly be responsible for the embarrassment and inconvenience, which would no doubt be occasioned by the disallowance of the Act validating the Revised Statutes.

As, however, the public inconvenience arising from disallowance would be very great, the undersigned, not without some doubt as to the propriety of such a course, refrains from recommending such disallowance, but recommends that the attention of the Lieutenant-Governor of Nova Scotia be again called to the matter, with a view to the repeal of the objectionable provisions.

(2.) Sections 94 and 96 of chap. 4, "Of the elections of members of the House of Assembly," purport to deal with the offences of forgery and perjury respectively, and especially in the case of section 96, appear to be clearly beyond the powers of the legislature.

(3.) The 65th section of chap. 29, "Of Public Instruction," provides for the punishment by fine and imprisonment, at the discretion of the court, of any person making a false declaration of the right to vote at a school meeting, the offence being perjury by the statute of Canada, 32-33 Vic., chap. 23.

(4.) The first section of chap. 51, "Of Bridges and Public Landings," purports to give the municipal council control over all public landings and draw-bridges within the municipality.

This provision would, doubtless, be construed as meaning such public wharfs, landings and draw-bridges, as were within the authority of the legislature, but as it appears to apply to all structures of the kind named, and as many of these are not within the authority of the legislature, it would seem desirable that the language of the section should be more restricted, so as not to be misleading.

(5.) Chapter 53, "Of Railways," is an adaptation of the Consolidated Railway Act of Canada.

By inadvertence the 28th section contains the word "Dominion" instead of the word "Province."

(6.) Chapter 69 contains the law of the province on the subject of the conveying of timber and lumber on rivers, and the removal of obstructions therefrom. The question has been raised as to whether or not legislation such as this by a province is free from objection. It was mooted in the report on chap. 6, of the Acts of 1870, Nova Scotia, and discussed in the report on chapters 89, 90, 91 and 92 of the Acts of 1875 of the same province.

In the absence of any decision that the legislature has, in this respect, exceeded its powers, the undersigned does not deem it necessary to make any recommendation in respect to this chapter.

(7.) Some of the provisions of chap. 23, "Of the regulations and inspection of Provisions, Lumber, Fuel and other Merchandise," are, the undersigned thinks, legislation respecting "trade and commerce." In the revision of 1873, these provisions were published in the appendix of legislation upon matters, wholly or partially within the jurisdiction of the parliament of Canada, or of doubtful jurisdiction. An amendment to the law on this subject, made by the legislature in 1880 (43 Vic., chap 9), was questioned, as being a regulation of trade and commerce.

(8.) The 41st section of chapter 75, "Of licenses for the sale of Intoxicating Liquors," prescribes a penalty of not less than twenty dollars for the offence of bribing or attempting to bribe, intimidating or attempting to intimidate a witness, with a view to hinder him from giving testimony as to any violation of the chapter, this offence is a misdemeanour at common law.

(9.) The provisions of sections 31 and 32 of chap. 76, "Of the preservation of useful Birds and Animals," which prohibit the export of moose and cariboo hides, are similar to enactments which have been questioned as affecting trade and commerce."



(10.) In chap. 79, "Of Joint Stock Companies," the attempt in the 38th section to make the offence therein defined a misdemeanour, is open to grave question.

The 85th and 87th sections are subject to the same remark.

(11.) Chap. 86, "Of the Property and Civil Rights of Aliens," deals with a subject assigned exclusively to the parliament of Canada, and in respect of which parliament has legislated. The chapter, the undersigned thinks, should be repealed.

(12.) Chap. 104, "Of the Supreme Court and the procedure therein," contains provisions respecting the qualification, office and precedence of the judges of that court, which has been questioned in former reports on legislation. The same remark applies to the qualification of county judges, chap. 105, sec. 3. The question is not one of much public importance, and may fairly be left in abeyance.

(13.) Sections 16 and 17 of chap. 107, "Of Witnesses and Evidence," appear to some extent to trench upon procedure in criminal cases, in so far as they extend to cases of assault and to criminal proceedings.

(14.) In his report of the 27th July, 1881, the Minister of Justice took exception to the provisions of section 14, chap. 11 of the Acts of 1880, which purport to authorize barristers of the Supreme Court of Nova Scotia to act as advocates and proctors in the vice-admiralty court of that province. The provision is repeated in section 21 of chap. 108, "Of Barristers and Attorneys."

(15.) By chap. 110, "Of Petition of Right," the Supreme Court of Nova Scotia is authorized to take cognizance of any matter under the Act passed by the parliament of Canada during its session in the year 1875, intituled: "An Act to provide for the institution of suits against the Crown by Petition of Right, and respecting procedure in Crown suits," and to administer the rights by such Act conferred, in accordance with the procedure therein defined. The Act of which this chapter is a consolidation, was passed in 1875, when the Act of Canada referred to was in force. The latter Act was, however, repealed in 1876, a fact that apparently has been overlooked.

(16.) Chap. 118, "Of the relief of Indigent Debtors confined in Jail," contains certain provisions which have provoked some discussion. The undersigned concurs in the views expressed by his predecessor in his report of 26th March, 1885.

The undersigned recommends that the attention of the Lieutenant-Governor of Nova Scotia be called to the several provisions of the Revised Statutes, which have been referred to, with a view that the same may have the consideration of his government and the legislature of Nova Scotia, and that such amendments as are necessary may be made.

3. Mrs. Maria Kearney, by her solicitor, Mr. T. J. Wallace, has prayed your Excellency to disallow the following Acts:—

Chap. 23, intituled: "An Act to enable the government of Nova Scotia to appropriate lands for public purposes; and

Chap. 31, intituled: "An Act to confirm sales of land under order of Supreme or Equity Courts."

As these Acts are, in the opinion of the undersigned, within the authority of the legislature, and as the litigation with which it was alleged they would interfere has, apart therefrom, been decided by the Supreme Court of Canada adversely to the petitioner, the undersigned, referring to the correspondence which is submitted herewith, recommends that the power of disallowance be not exercised as prayed for.

4. Mr. Norvin Green, of the city of New York, president of the Montreal and European Short Line Railway Company, has prayed your Excellency to disallow chap. 39, intituled: "An Act to confirm and give effect to an Indenture bearing date the 27th day of July, 1883, and purporting to be made between the North American Construction Company, of the first part, the Great American and European Short Line Railway Company, of the second part, and William Stewart and W. H. Chisholm of the third part, and also purporting to be executed for the said company by Charles L. Snow."

The undersigned having carefully considered this Act, and being of opinion that it is within the authority of the legislature of Nova Scotia, and not objectionable upon any ground of public interest or convenience, recommends that it be left to its operation.



This is not the place for a discussion of the question at issue between the government of Canada and the Montreal and European Short Line Railway Company, yet the undersigned deems it proper, in submitting Mr. Green's petition, to put on record that your Excellency's government does not acquiesce in his statement of the facts of the case.

The undersigned respectfully recommends that the substance of this report, if approved, be communicated to the Lieutenant-Governor of Nova Scotia, and that he be informed that it is not the intention of your Excellency to exercise the power of disallowance in respect of any of the Acts passed by the legislature of that province in the session of 1885.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,

*Minister of Justice.*

*His Honour the Lieutenant-Governor to the Honourable the Secretary of State.*

GOVERNMENT HOUSE, HALIFAX, N.S., 27th January, 1887.

SIR,—In accordance with a minute of council, of which I inclose a certified copy, I have the honour to transmit a copy of the Attorney General of this province *in re* the disallowance of provincial statutes of Nova Scotia, fifth series, and the objections thereto.

I have, &c.,

M. H. RICHEY,

*Lieutenant-Governor.*

*Copy of a Report of the Hon. the Attorney General of Nova Scotia, approved by His Honour the Lieutenant-Governor in Council on the 30th day of November, A.D. 1886.*

*Re* disallowance of provincial statutes of Nova Scotia, fifth series, and objections thereto:

The undersigned has had under special consideration the despatch of the Honourable the Secretary of State for Canada to his Honour the Lieutenant-Governor, dated 10th September, 1886, relating to the fifth and last series of the revised statutes of Nova Scotia, and begs to submit as follows, touching the several points therein raised:

1. Exception is taken to sections 19 *et sequitur* of chapter 3 "of the Composition, Powers and Privileges of the House." The substance of the sections objected to is that members of the Legislative Council and committees thereof, shall hold, exercise and enjoy such and like privileges, immunities and powers as shall for the time being be held, enjoyed and exercised by the Senate of the Dominion of Canada, and in a corresponding manner the members and committees of the House of Assembly are to hold, enjoy and exercise the same privileges, immunities and powers as shall for the time being be held, enjoyed and exercised by the House of Commons of Canada.

The undersigned is aware that exception has been taken to this enactment by successive Ministers of Justice of Canada, and that a similar provision enacted by the legislature of Ontario and Quebec respectively was disallowed. The reports of the several Ministers of Justice on this subject have been carefully perused and duly considered, but in none of them, it is submitted, are the reasons for the unconstitutionality of said provision clearly and convincingly stated. The first report upon the subject is that by Sir John A. Macdonald, Minister of Justice, dated 14th July, 1869, regarding the Ontario Act defining the privileges, &c., of the Legislative Assembly. This was given after

the opinion of the law officers of the crown in England had been obtained, as their opinion is dated 4th of May, 1869. Some reasons are given by the Minister of Justice in his report for the disallowance of the clause now objected to in the Nova Scotia Act, the chief being that section 18 of the British North America Act confers on the Senate and House of Commons of Canada the authority to confer on its members, privileges, immunities, and powers co-extensive with those enjoyed and exercised by the Commons of the United Kingdom. It is assumed by the minister that the power to pass an Act defining these powers, &c., was conferred upon the parliament of Canada on the ground that without such a provision the parliament of Canada could not have passed such an Act. With the greatest deference, the undersigned cannot unreservedly accept this doctrine. The right of conferring privileges, powers and immunities upon the members and committees of any independent legislature under the British form of government, should be regarded rather as inherent, and section 18 of the British North America Act in that light would be regarded rather as a limitation, than a conferring of power.

The whole question was elaborately discussed by the late Hon. J. Sandfield Macdonald, the then Attorney General of Ontario, in a report of the date September 1st, 1869, and the reasoning contained in that able report the undersigned takes the liberty of averring has never yet been successfully overthrown by any subsequent report or opinion from the Department of Justice at Ottawa. Regarding the opinion of the law officers of the crown in England, it is submitted that this was given without hearing the other side, or without having presented to their consideration many powerful reasons which might have been easily adduced in favour of the enactment complained of.

Nevertheless the undersigned would not desire to recommend adhesion to any enactment by the legislature of this province at variance with the constitution of the country; but before advising the repeal of the clauses complained of in the despatch of the Honourable the Secretary of State, would seek for further and more cogent reasons for pronouncing it unconstitutional. It seems, in the opinion of the undersigned to be an open question, susceptible of argument on both sides. Might not the point, which is one of importance—inasmuch as it seems to involve the right of the provincial legislature to confer any powers and immunities upon its members—be submitted for final adjudication to the Supreme Court of Canada?

The undersigned has reached the conclusion with respect to the sections 19 and 20 of chapter 3, to use the words of the Hon. J. Sandfield Macdonald, that they are "not liable to the exceptions which have been taken to them, and that sufficient consideration has not, in his humble opinion, been given to the important distinction between powers claimed by the authority of a statute, and powers claimed as belonging inherently to a legislative body.

2. Exception is taken to sections 94 and 96 of chapter 4, "of election of Members of the House of Assembly."

The undersigned is of the opinion that section 96 is a useless and superfluous provision, and might with propriety be eliminated from the chapter. It seems, however, not to have been objected to at the time of its enactment, and while it confers no advantage, its retention can never result in any confusion.

3. Exception is likewise taken to section 65 of chapter 29, "of Public Instruction," inasmuch as it provides for the punishment by fine and imprisonment, at the discretion of the court, of any person making a false declaration of the right to vote at a school meeting, the offence being perjury by statutes of Canada, 32-33 Vic., chapter 23. In the opinion of the undersigned it is by no means clear that the offence defined amounts to perjury within the meaning of the Canadian statute referred to. No oath is prescribed and no form of declaration which the statutes of Canada declare to carry the penalties of perjury when false. It seems rather in the nature of a fraudulent misrepresentation of fact, for which a reasonable and adequate punishment is attached; even if the making of such a declaration as aforesaid would be held to amount to perjury within the meaning of 32 Vic., chapter 23, still there is nothing in the section objected to which overrides, or attempts to override, the exercise of the criminal statute. The option is left to proceed in another form; still it is admitted that if the declaration



when false is clearly corrupt perjury within the meaning of the Canadian statute, then the penalty ought not to be in the section. But, as at present advised the undersigned submits that the declaration, when false, does not amount to perjury within the meaning of the Canadian statute, nor under the terms of the common law, and therefore the penalty is one which the legislature may legally impose.

4. It is recommended that the suggestion contained in the despatch of the Honourable Secretary of State touching section 1 of chapter 51, "of bridges and public landings" be adopted, and that the legislature be asked to amend the chapter so as to limit the authority of the municipalities to the structures which are within the authority of the legislature.

5. The error in section 28 of chapter 53, "of railways" was a pure inadvertence and should be rectified.

6. Exception is taken to chapter 69, "of the conveying of timber and lumber on rivers, and the removal of obstructions therefrom," though no recommendation is made by his Excellency the administrator of the government. Such being the case it is not necessary to say more than that in the opinion of the undersigned, the provisions of the chapter in question are strictly within the authority of the legislature.

7. It is admitted that the chapter relating to the inspection of provisions, lumber, fuel and other merchandise deals with subjects exclusively belonging to the federal parliament. It was left in the appendix of the Revised Statutes, fourth series, for that reason. In respect to the particular matters embraced in the Act the parliament of Canada has not, as the undersigned is advised, dealt with them, nor has there been any Act repealing the sections now embodied in the chapter under consideration. As a consequence the provisions of said chapter are still in force in Nova Scotia. For this reason it was deemed proper that the Act should appear in the body of the statutes, until it was actually superseded and repealed by the federal parliament.

8. Chapter 75, "Of Licenses for the sale of Intoxicating Liquors," has been repealed by the legislature of Nova Scotia since the promulgation of the fifth series of the Revised Statutes, and therefore it is not necessary to deal with the objections raised in respect to it.

9 and 10. No comment or remark is needed in respect to the observations in the despatch of the Honourable the Secretary of State in paragraphs 9 and 10.

11. Exception taken to chapter 86, "Of the Property and Civil Rights of aliens," on the ground that this is a matter within the sole jurisdiction of the federal parliament. Under the British North America Act, section 91, it is laid down that among the matters exclusively under the control of the parliament of Canada should be "naturalization and aliens." But it is not clear that this exclusive jurisdiction extends to the control of their property and civil rights in the several provinces. The chapter in question has never, as the undersigned is advised, been distinctly repealed or sought to be repealed by the federal parliament, and the undersigned regrets that he is unable to concur in the suggestion that chapter 86 should be repealed by the legislature of this province.

12, 13 and 14. No remarks are considered necessary in respect of the observations in paragraphs 12, 13 and 14.

15. Chapter 110 is no longer of any value, for the reasons stated in the despatch of the Honourable the Secretary of State, and might properly be expunged from the statutes.

16. The undersigned has before him the report of 26th March, 1886, touching the matter, "Of the relief of Insolvent Debtors in Jail," and has nothing to remark thereon except that, in his opinion, great inconvenience would result if the power to give relief to imprisoned debtors were found to be *ultra vires* of the provincial legislatures. Nor indeed does there seem to be any sound reason for so holding, so far as mere liberation from jail is concerned.

All of which is respectfully submitted.

J. W. LONGLEY.

16th November, 1886.



*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th April, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th March, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that it appears from the despatch of the Lieutenant-Governor of Nova Scotia, and its inclosures, that his government is reluctant to adopt the suggestions made by the undersigned in his report of the 9th October last, that certain sections of chapter 3 of the Revised Statutes of Nova Scotia, 1886, 5th series, should be repealed, because they purport to confer powers on members of the provincial legislature which it is beyond the competence of that legislature to confer. The reason for such reluctance appears to be that the Attorney General of the province has reported to his Honour that "the reason for the unconstitutionality of such provisions have never in his opinion, been clearly and convincingly stated, and that in his opinion, the right of conferring privileges, powers and immunities upon the members and committees of any independent legislature under the British form of government, should be regarded rather as inherent."

The Attorney General of Nova Scotia adheres to the views expressed in relation to a similar statute, by the Honourable John A. Macdonald, in a report dated 1st September, 1869, and dissents from those put forward by the law officers of England, regarding that statute in their opinion, dated 4th May, 1869, and by Sir John A. Macdonald, then Minister of Justice, in his report thereon, dated the 14th July, 1869, and by the Honourable Edward Blake, then Minister of Justice, in his report on the Nova Scotia statute (of which the one in question is a copy) dated the 13th November, 1876, and by the undersigned in his report of the 9th August last.

The Attorney General also indicates a wish, before advising the appeal of the clauses complained of, for further and more cogent reasons for pronouncing it unconstitutional.

With a view of obtaining such, he asks whether the point might not be submitted for final adjudication to the Supreme Court of Canada?

The time within which disallowance of the statute in question might be made, has expired, and the undersigned did not advise the exercise of the power in this instance for the reason stated in his report of the 9th August last, that the objectionable provisions are but part of one of the chapters of the Revised Statutes of Nova Scotia, and that great public inconvenience might result from the disallowance of an Act embodying, as it did, nearly all the public law of the province, and bringing into force the Revised Statutes.

The undersigned is, however, unable to advise that the question as to the power of the legislature to make such enactments as those in question should be submitted to the Supreme Court.

Such a course, he thinks, should only be adopted when greater urgency exists for a decision of the point in dispute, and when greater doubt attaches to the objections to the enactments, than can be said to exist now after the series of concurrent opinions which had been pronounced regarding such provisions, and after the full and repeated judicial examination which has been given to the point taken by Mr. John Sandfield Macdonald, and relied on by the Attorney General of Nova Scotia.

The reasons given by the undersigned against the exercise of the power of disallowance apply equally to other provisions of the Revised Statutes of Nova Scotia, to which attention was called in his report of the 9th August last, but in respect of which it seems that his Honour's government does not feel disposed to adopt the suggestions contained in said report.

J. S. D. THOMPSON,  
*Minister of Justice.*

## NOVA SCOTIA—49TH VICTORIA, 1886.

(4TH SESSION, 28TH GENERAL ASSEMBLY.)

*Petition of Mr. E. W. Plunkett to His Excellency the Governor General, re Chapter 1.  
To His Excellency the Governor General of Canada :*

The petition of Edmund W. Plunkett, of Brockville, Ontario, civil engineer, respectfully submits :

That your petitioner represents the proprietors of a majority of the shares and "A" debenture stock of the Western Counties Railway Company of Nova Scotia ;

That the government of Nova Scotia, recently, in a sudden and hurried manner, without notice to any of the parties interested, and without their consent, did introduce and have passed by the legislature of Nova Scotia an Act, intituled :

Chapter 1. "An Act to authorize certain grants in aid of railways and to provide for the completion and consolidation of the railways between Halifax and Yarmouth ;"

That said Act provides for the expropriation for public purposes, of the property and rights of the Western Counties Railway Company, and for payment as compensation of about one-tenth of the present value of such property and rights, as can be abundantly proved to your Excellency's satisfaction ;

That the government of Nova Scotia in thus arbitrarily expropriating the company's rights and property without consent, without even an ordinary arbitration to determine value, and without almost any compensation, has grossly violated the principles of common honesty and justice, to say nothing of public policy ;

Wherefore your petitioner humbly prays :

That your Excellency be pleased to suspend or cancel said Act in order that a great wrong may be prevented.

And your petitioner will ever pray.

E. W. PLUNKETT.

*Supplementary Petition of Mr. Plunkett to His Excellency the Governor General re Chapter 1.*

*To His Excellency the Governor General :*

The supplementary petition of Edmund Walter Plunkett, presently of Brockville, engineer,—

Respectfully represents, in addition to, and in explanation of his former petition for disallowance of an Act, recently passed by the legislature of Nova Scotia, chapter 1, intituled : "An Act to authorize certain grants in aid of railways, and to provide for the completion and consolidation of the railways between Halifax and Yarmouth ;"

That there has been expended upon the Western Counties Railway, between Annapolis and Yarmouth, a distance of about 85 miles, the following amounts, exclusive of interest :

Paid up shares.....	\$ 500,800
do A debenture stock.....	726,500
do B do do .....	325,000
do Nova Scotia government subsidy .....	680,000
do County subsidies for land damages, &c.....	147,000
Total .....	<u>\$2,378,300</u>

That Mr. Edmund Wragge, C.E., a railway engineer of 20 years Canadian experience, of recognized ability and character, made a careful examination in 1882 of the Western Counties Railway property at the request of Sir Henry Tyler, president of the Grand Trunk Railway of Canada, who was then chairman of the Nova Scotia Railway Company; this was an English company lately formed to purchase, acquire and consolidate Nova Scotian lines. Mr. Wragge's estimate of the value of the Western Counties Railway Company's property to the consolidation system, was £279,000 sterling, or in round figures \$1,400,000. This sum did not include the value of the Western Counties Railway Company's interest in the Windsor Branch property transferred to it by 37 Victoria, chapter 16, of the Dominion parliament; but the value of the Western Counties Railway Company's claim to the Windsor Branch has recently been established by the Dominion government who, in consideration of said company settling that claim and completing its line, have agreed to give a subsidy equivalent to the net earning of the branch until the company gets possession in 28 years. This subsidy capitalized is equal to \$600,000;

That the value of the 67 miles of the Western Counties Railway in operation as determined and certified by Mr. Wragge is about \$20,000 per mile, and can be no less than when made up in 1882, as improvements have since been made;

That \$20,000 per mile according to Mr. Wragge's certificate is well known to be a reasonable price for an ordinary railway in operation in Nova Scotia;

That according to the Act and agreement petitioned against, no larger sum than \$7,500 per mile can be paid by the province for the Western Counties Railway, its interest in the Windsor Branch, its lands, assets and property generally;

That the commercial or dividend paying value, of a new, incomplete, undeveloped railway, disconnected from all other railways, and cut off from interchange of traffic with them, does not form a fair or reasonable basis of purchase by a government for public purposes; that nevertheless that basis has been greatly departed from by the provisions of the Act and agreement petitioned against; for the Premier of the government of Nova Scotia from his place in the legislature made on the 5th May, 1886, this statement:

"I believe these roads will earn more than \$100,000 at no distant day." Here is the admission of the leader of the government of a capital value at no distant day of \$12,000 per mile, which he wants appropriated for public purposes for \$7,500 per mile;

That subsection *e* of clause 13, and subsection *d* of clause 31, of the agreement petitioned against, make the payment of a larger amount than \$7,500 per mile for the Western Counties Railway Company's property impracticable under the legislation; and that said sum of \$7,500 per mile provides only a distribution of five cents per dollar of principal and interest of the company's just mortgage debenture stock, secured on its interest in the Windsor Branch property;

That the power given the Nova Scotia government, in clause 20 of the Act, to vest the properties and rights of the present company, by mere proclamation, and free of incumbrance, in another company, before payment or settlement has been effected, or secured, or the creditors paid, or the existing mortgages satisfied, is fatal to the rights of property, and leaves the owner no resource, as he cannot sue the government of Nova Scotia;

That the summary expropriation of property for provincial purposes, at a valuation arbitrarily fixed by the government or legislation, without reference to arbitration, court of assessment, or other lawful machinery for appraising value, is a violation of the indefeasible rights of property and constitutional usage;

Wherefore your petitioner prays that the Act, Chapter 1, intituled: "An Act to authorize certain grants in aid of railways and to provide for the completion and consolidation of the railways between Halifax and Yarmouth," passed by the legislature of Nova Scotia at its last session, may be disallowed.

And your petitioner will ever pray.

E. W. PLUNKETT.

QUEBEC, 26th July, 1886.



*Mr. J. W. Bingay to the Secretary of State.*

YARMOUTH, N.S., 11th August, 1886.

SIR,—I am instructed by the directors of the Western Counties Railway Company to forward you the inclosed, viz :

- (1.) Letter of R. G. Elwes to Secretary W. C. R. Co., 26th June, 1886.
- (2.) Directors' answer thereto.
- (3.) Resolution of directors respecting disallowance dated 10th August, 1886, and passed on that day.

These will, if necessary, be followed by a formal petition for disallowance, and are intended to supplement the petition of E. W. Plunkett already filed in this matter.

While being willing to make an amicable arrangement, the company strenuously objects to any Act or Acts which expropriate their property without providing for adequate compensation, and which were passed by the legislature of Nova Scotia at the end of a long session, and without notice to, or any opportunity for the company to oppose, many various objectionable clauses, several of which, in the opinion of the Board, are beyond the power of the local legislature.

I have, &c.,

JAS. WENT. BINGAY,  
*Secretary W. C. Ry. Co.*

*Letter of Mr. Elwes to Secretary Western Counties Railway Company.*

LORNE HOUSE, YARMOUTH, N.S., 26th June, 1886.

*Consolidation of the Western Railways.*

DEAR SIR,—Referring to my interview with your Board yesterday and to the negotiations which are in progress for the acquisition of your outstanding debenture stock, I now desire to ascertain from your board whether, in the event of those negotiations resulting in an amicable settlement with the debenture stockholders, your directors will be prepared to recommend your company to assent to, and join in the transfer of the undertaking of the company, by the government of Nova Scotia, to the Halifax and Great Western Railway Company, under the powers claimed by the government, by virtue of the agreement 16th August, 1879.

I have, &c.,

R. GERVASE ELWES,  
*M. Inst. C. E.*

(On behalf of the Halifax and Great Western Railway Company.)

*Answer of Directors Western Counties Railway to Mr. Elwes.*

Extracted from Minutes of Directors' meeting held 26th June, 1886. "That the following letter be sent to Mr. Elwes":—

YARMOUTH, N.S., 26th June, 1886.

SIR,—The directors have considered your letter of this date and have passed a resolution to the effect that in the event of the negotiations now in progress for the acquisition by your company of the "A" debenture stock resulting in an amicable settlement with the holders before January, 1887, and the payment to the company in addition, of the sum of five thousand dollars, the directors will be prepared to recom-

mend the company to assent to, and join in the transfer of the undertaking of the company by the government of Nova Scotia to the Halifax and Great Western Railway Co., under the powers claimed by the government, by virtue of the agreement of 16th August, 1879. The directors wish to be understood that the above is made without prejudice to, or waiver of, any legal or equitable rights of the company or bondholders to resist any attempt, by the government of Nova Scotia or others, to secure possession or control of the undertaking from the company without their consent.

I have, &c.,

JAS. WENT. BINGAY,  
Secy. W. C. Ry. Co.

*(Extract from Minutes of Directors' Meeting held 10th August, 1886.)*

Resolved,—That the president and secretary be instructed to petition his Excellency the Governor General to disallow the whole or such parts of the Acts of the Nova Scotia legislature, 1886, chaps. 1 and 16, as provide for the expropriation and acquisition by the Nova Scotia government, of the railways and property of the Western Counties Railway Company, and that the Hon. Secretary of State be notified that the directors, while not objecting to the charter of the Halifax and Great Western Railway Company and the amicable acquisition by them of the property and securities, and having assented to negotiations between them or their agents, and the debenture holders of the Western Counties Railway Company, and others for that purpose, will resist any attempt on the part of the government of Nova Scotia or other persons to acquire possession of any of the company's property, on the condition contained in the Acts asked to be disallowed.

*Further Supplementary petition of Mr. E. W. Plunkett to His Excellency the Governor General, re Chapter 1.*

*To His Excellency the Governor General of Canada :*

The supplementary petition of Edward W. Plunkett, of Brockville, Ontario, Civil Engineer, humbly sheweth,—

That your petitioner represents the proprietors of a majority of the shares and "A" debenture stock of the Western Counties Railway Company of Nova Scotia.

That the government of Nova Scotia, in a sudden and hurried manner, without their consent, introduced and procured to be passed by the legislature of Nova Scotia, at the last session thereof, an Act, being chapter 1 of the Acts of 1886, and intituled : "An Act to authorize certain grants in aid of Railways, and to provide for the completion and consolidation of the Railways between Halifax and Yarmouth."

So soon as your petitioner became aware of the said Act, your petitioner presented an humble petition to your Excellency for the disallowance of the same. Your petitioner is desirous that the present petition should be read as supplementary to his said former petition ;

In the said Act, and the agreement made part of the same, and made substantially between the Government of Nova Scotia of the one part, and the joint stock association. it is recited that the said government possesses certain powers of disposing of the Western Counties Railway Company, and all its franchises (see section 12 of the Act, and the recital to said agreement).

The powers of disposition, if any such exist (which your petitioner does not admit) possessed by said government, are powers to sell the said railway, said to be contained in a certain mortgage alleged to have been executed by the Western Counties Railway Company, but which your petitioner is informed was never executed by the said railway company.

By the said Act and agreement the said government agree with the said joint stock association, limited, at the request of a certain company, in said Act and agreement mentioned, and to be organized by said joint stock association, limited, to put in force and exercise all statutory and other powers possessed, or to be possessed by said government, and take all necessary steps so as to acquire and hand over to said last mentioned company, free of all cost, except necessary expenses of transfer, the entire rights, property and privileges of the Western Counties Railway Company (see section 20 of the said Act and subsections 4, 25 and 28 of the said agreement).

Your petitioner submits that the said agreement is contrary to equity, and if carried out would be a gross breach of trust by the said government; inasmuch as it requires the said government to exercise the said powers of sale alleged to be possessed by said government, not when the said government deem proper so to do, but whenever requested so to do by said company to be organized as aforesaid; and inasmuch as it stipulates for the use of the said powers of sale for purposes collateral to, and entirely different from those for which they were created, that is to say, for the purpose of enabling the said government to acquire the Western Counties Railway and property, and to hand it over as a gift to said company to be organized, and not for the purpose of enabling the said government to sell the said Western Counties Railway and its property in an open, fair and reasonable manner and so as to produce the highest possible price, as it is the plain and manifest duty of the said government to do, if it should determine to exercise said powers of sale.

Your petitioner submits that the said Act is contrary to all sound principles of legislation and ought to be disallowed.

Wherefore your petitioner humbly prays that your Excellency will be pleased to disallow the said Act.

And your petitioner will ever pray.

F. W. PLUNKETT.

OTTAWA, 29th September, 1886.

*Petition of Messrs. Markby, Stewart & Co., to His Excellency the Governor General, re Chapter 16.*

*To His Excellency The Most Honourable Sir Henry Charles Keith Petty Fitzmaurice Marquis of Lansdowne, Governor General of Canada, &c., &c., &c.*

The petition of the undersigned, Messrs. Markby, Stewart & Company, of the city of London, England, Solicitors, humbly sheweth :

That the said Markby, Stewart and Company are proprietors of forty-five thousand three hundred pounds (£45,300) of the "A" debenture stock of the Western Counties Railway Company of Nova Scotia;

That said debenture stock was deposited with the government of Nova Scotia upon the terms and conditions set forth in the letter dated the sixteenth of August, one thousand eight hundred and seventy-nine, from Messrs. Markby, Stewart & Company's duly authorized attorney, F. Gundry, to the government of Nova Scotia, and upon no other terms or conditions whatever; and a true copy of said letter is hereunto attached and marked "X";

That the government of Nova Scotia received said forty-five thousand three hundred pounds (£45,300) "A" stock on the terms of the said Gundry's said letter, and have since held it on the said terms, and none other, as appears from the acknowledgment of the Provincial Secretary, dated the eighteenth of August, one thousand eight hundred and seventy-nine, a copy of which is hereunto annexed and marked "Y";



That at the last session of the legislature of Nova Scotia, and during the very last hours of its sitting, when many of its members had left for home, the government of the province hurriedly and improperly, and without notice, or any justification, caused to be introduced, and passed an Act, 49 Victoria, chapter 16, respecting the Western Counties Railway Company, a copy of which is hereunto annexed; and the said Act was assented to on the eleventh of May, one thousand eight hundred and eighty-six;

That the agreement of sixteenth of August, one thousand eight hundred and seventy-nine, between the Western Counties Railway Company and the government of Nova Scotia, which is recited in, and forms the basis of said Act (49 Victoria, chapter 16) makes no reference to, and cannot bind, the forty-five thousand three hundred pounds (£45,300) "A" stock belonging to Messrs. Markby, Stewart & Company, which were deposited with the government, upon terms absolutely distinct and different from those of said agreement, as established by the annexed letter "Y" of the Provincial Secretary, before referred to;

That notwithstanding, the said forty-five thousand three hundred pounds (£45,300) "A" stock, forms part of the one hundred and ten thousand pounds (£110,000) referred to in clause one of the said Act (49 Vic., chap. 16), it can be subject only to the express terms of the deposit, as mutually agreed to by Messrs. Markby, Stewart & Company's attorney, Mr. Gundry, and the Provincial Secretary;

That in a recent Act, 49 Vic., chap. 1, passed by the government of Nova Scotia, respecting provincial railways—it is enacted, that the agreement, appended to said Act, is approved and ratified and made binding on the government. And said agreement itself in section thirty-one thereof, subsection (d), provides that a sum not exceeding one hundred and twenty thousand dollars, less twenty thousand dollars for debts due to the counties, shall be paid for the amicable acquisition of the Western Counties Railway;

That said Act (49 Vic., chap. 1) also provides (in section nineteen, subsection four) for the assumption, by a new company, of the "B" debentures of the Western Counties Railway Company, guaranteed by the government of Nova Scotia, and the indemnification of said new company by the government, in view of such assumption.

That in providing a sum of money in addition to the government claim (against the Western Counties Railway Company) for acquiring the property as provided in 49 Vic., chap. 1, the government itself has established the fact that the property is worth more than its claim, and that consequently the collateral security must be released;

That the Act (49 Vic., chap. 16) is unjust, tyrannical and unconstitutional in authorizing the violation of the agreement contained in the annexed letter of the eighteenth of August, one thousand eight hundred and seventy-nine, of the provincial secretary, and in empowering a single individual member of the government to dispose of private property as in sections three and four of said Act, on any terms whatever that he may arbitrarily decide upon; and in face of the fact that the said property does not belong to the government of Nova Scotia—but can only be held as collateral for a debt, more than liquidated by the property itself, as arranged and settled by 49 Vic., chap. 1, as aforesaid;

Wherefore, your petitioners humbly pray that your Excellency may be pleased to disallow the said Act, 49 Vic., chap. 16, passed by the legislature of Nova Scotia.

MARKBY, STEWART & CO.,

*Solicitors, 59 Coleman Street, London,*

By GORMULLY & SINCLAIR, their Attorneys.

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“ X ”

BANK OF MONTREAL, HALIFAX, N.S., 16th Aug., 1879.

DEAR SIR,—In compliance with instructions received from Messrs. Markby, Stewart & Co., of London, England, I beg to hand you herewith scrip for forty-five thousand three hundred pounds, sterling, of “ A ” debenture stock of the Western Counties Railway Company of Nova Scotia. This scrip is made out in your name, as Provincial Secretary, and is to be held by you as collateral security for the provincial guarantee of fifty thousand pounds, sterling, of “ B ” debenture stock of the said company.

It is to be understood that when the time arrives for the surrender, by the Nova Scotia government, of the accompanying scrip of forty-five thousand three hundred pounds, sterling, by reason of a release of the provincial guarantee, a substitution of other security, or any other cause whatever, then the forty-five thousand three hundred pounds, sterling, collateral stock, now deposited with you, will be duly re-transferred and delivered to Messrs. Markby, Stewart & Co., by you.

Please acknowledge receipt of scrip and confirm above.

Yours truly,

F. GUNDRY,  
*Manager.*

The Hon. S. H. HOLMES,  
Provincial Secretary.

“ Y ”

HALIFAX, 18th Aug., 1879.

SIR,—I have the honour to acknowledge the receipt of your letter of the 16th inst., inclosing scrip for forty-five thousand three hundred pounds, sterling, of “ A ” debenture stock of the Western Counties Railway Company of Nova Scotia, and in reply beg to say that the same is received and held by the government of Nova Scotia in terms of your letter above referred to.

I have, &c.,

S. H. HOLMES,  
*Provincial Secretary, N.S.*

To F. GUNDRY, Esq.,  
Manager Bank of Montreal, Halifax.

*Supplementary Petition of Messrs. Markby, Stewart & Co., to His Excellency the Governor General, re Chapter 16.*

*To His Excellency the Most Honourable Sir Henry Keith Petty Fitzmaurice, Marquis of Lansdowne, Governor General of Canada, &c., &c., &c.*

The supplementary petition of the undersigned, Messrs. Markby, Stewart & Co., London, England, solicitors, humbly sheweth :

That your petitioners are the proprietors of a sum of forty-five thousand three hundred pounds sterling of the "A" debenture stock of the Western Counties Railway Company of Nova Scotia, authorized to be issued under chapter sixty-four of the Nova Scotia Act of 1879 ;

The said debenture stock was deposited by your petitioners with the government of Nova Scotia upon the terms, conditions and agreements set forth in the letter dated 16th August, 1879, from your petitioners' duly authorized attorney, F. Gundry, to the government of Nova Scotia, and upon no other terms, conditions or agreements whatever ; a true copy of such letter is hereunto annexed and marked "X" ;

That the government of Nova Scotia received and accepted the said forty-five thousand three hundred pounds "A" debenture stock on the terms, conditions and agreements contained in the said letter, as fully appears from the letter of the Provincial Secretary in reply thereto, dated the 18th August, 1879, a copy of which is hereunto annexed and marked "Y," and have since held the said stock on said terms, conditions and agreement and no other ;

That at the last session of the legislature of Nova Scotia, and during the very last hours of its sittings, when many of its members had left for home, the government of the said province of Nova Scotia hurriedly and improperly and without the knowledge of, and without any notice to your petitioners caused to be introduced and passed by the legislature of Nova Scotia, the Act 49 Vic., chap. 16, intituled : "An Act respecting the Western Counties Railway Company," a copy of which said Act was and is annexed to your petitioners' original petition herein transmitted to your Excellency on the third day of August, A.D. 1886.

That the said forty-five thousand three hundred pounds sterling "A" debenture stock belonging to your petitioners, is part of the one hundred and ten thousand pounds sterling of debenture stock of the eastern division of the said railway in the said Act mentioned ;

That by said Act the Provincial Secretary it authorized to sell, and to sell by public auction or private sale, without any notice to your petitioners, the whole of the one hundred and ten thousand pounds sterling of the debenture stock of the eastern division, which as before mentioned includes the said forty-five thousand three hundred pounds "A" debenture stock belonging to your petitioners ;

That by the said Act the Provincial Secretary though himself directed to be the seller of the debenture stock, is hereby authorized also to buy the same ;

That your petitioners are nowhere named or referred to in said Act, nor is it anywhere mentioned in the said Act that your petitioners are the owners of, or interested in, the said forty-five thousand three hundred pounds sterling "A" debenture stock, or that the said forty-five thousand three hundred pounds "A" debenture stock is included in, or forms part of the one hundred and ten thousand pounds sterling debenture stock thereby authorized to be sold ; but on the contrary, the said Act on its face purports merely to confirm a certain agreement in said Act mentioned, and dated the 16th day of August, A.D. 1879, and made between Her Majesty the Queen and the Western Counties Railway Company ;

In the said Act it is not alleged that your petitioners are parties to said agreement, and the fact is that petitioners are not parties to, or bound by said agreement, if any such exists ;



That in the Act passed by the said legislature at the same session, being the Act 49 Vic., chap. 1 (a copy whereof was annexed to your petitioners said former petition), it is enacted that a certain agreement, appended to said Act, is thereby approved and ratified, and made binding on the government. And the said last mentioned agreement itself, in section 3 thereof, subsection "d," provides that a sum not exceeding one hundred and twenty thousand dollars, less twenty thousand dollars for debts due the counties, shall be paid for the amicable acquisition of the Western Counties Railway.

That said Act 49 Vic., chap. 1, also provides in section 19, subsection 4, for the assumption by a new company of the "B" debenture stock of the Western Counties Railway Company, by the government of Nova Scotia, and the indemnification of the said new company by the government, in view of such assumption ;

That in stipulating that a sum of money in addition to the existing claims should be paid to the Western Counties Railway Company for acquiring its property as provided in 49 Vic., chap. 1, the government of Nova Scotia itself established the fact that the property of the said company is worth more than the claims against it, and that consequently, the collateral security held by the said government, even if still valid, which your petitioners do not admit, would not in any case require to be resorted to ;

That even assuming that the government of Nova Scotia by their dealings with the Western Counties Railway and otherwise, have not yet discharged and released the lien on the said forty-five thousand three hundred pounds sterling "A" debenture stock of your petitioners, created and defined by the letter aforesaid, yet the government holds security from the Western Counties Railway Company amply sufficient to protect the said government from all liability and loss on the guarantee executed by it for the said Western Counties Railway Company, and ought in fairness and justice to resort to such security before attempting to realize on your petitioners' said property ;

That from a perusal of the said Act, 49 Vic., chap. 1, it manifestly appears that the government of Nova Scotia does not intend to realize on the Western Counties Railway and the other securities held by said government, and is bound and intends to transfer said Western Counties Railway to the company in said chapter one, referred to ;

Your petitioners humbly submit that the said Act, 49 Vic., chap. 16, is unjust, unconstitutional and contrary to sound principles of legislation, inasmuch as the said Act passed without the knowledge and consent of, and without any notice to, your petitioners, changes the terms of the solemn contract entered into between the said government and your petitioners at the time of the deposit of the said forty-five thousand three hundred pounds sterling "A" debenture stock, as contained in said letters of the sixteenth and eighteenth of August, A.D. 1879, and on the faith of which your petitioners gave up possession of the said debenture stock, and inasmuch as the said Act passed without the knowledge or consent of, and without any notice to your petitioners, attempts to add a summary power of sale and other powers of a very oppressive and arbitrary character to the solemn contract entered into between the said government and your petitioners as aforesaid, and in reliance upon which your petitioners were induced to deposit with the said government the said debenture stock ;

Your petitioners for the reasons aforesaid humbly submit that the said Act, 49 Vic., chap. 1, passed in the manner and with the objects and purposes aforesaid, is opposed to every sound principle of legislation and should be disallowed by your Excellency.

Wherefore your petitioners humbly pray that your Excellency may be pleased to disallow the Act forty-nine Victoria, chapter sixteen, passed by the legislature of Nova Scotia.

MARKBY, STEWART & CO.

*Solicitors, 57 Coleman St., London.*

By GORMULLY & SINCLAIR their Attorneys.

*Petition of Mrs. Maria Kearney, with respect to Chapter 5.*

*To His Excellency Henry Charles Keith Fitzmaurice, Marquis of Lansdowne, Governor General of Canada :*

The petition of Maria Kearney, of Dartmouth, in the county of Halifax, and province of Nova Scotia, widow, humbly sheweth :

That an Act of the legislature of Nova Scotia was passed on the 11th day of May, 1886, chapter 5, intituled : " An Act respecting Public Charities," the fourth and fifth sections of which were intended chiefly to prevent your petitioner from recovering the lands described as Lot 1 in the schedule to said Act, and to destroy her title thereto without making any provision for compensation. This land was devised by your petitioner's father, Andrew McMinn, to your petitioner's mother during her life, and afterwards to any child or children the testator might have by his then marriage, and as he had no children by such marriage but your petitioner, who was born after the execution of the testator's will, it rightfully belonged to your petitioner on the death of her mother, which took place in 1881. It is true, certain proceedings took place in the chancery court of Nova Scotia, and the property was sold under these proceedings, and bought in by the plaintiff in that suit, but their validity is disputed on many grounds, among which are : that the chancery court had no jurisdiction ; that the order of sale did not bind your petitioner, who was then a mere infant, and whose title or right to the property was not set forth in the bill, but fraudulently suppressed and kept concealed from the court from the inception of the proceedings to their close, and that the plaintiff, who was also administratrix in that suit, could not purchase the property for herself, but that such purchase would be either void, or make her a trustee for your petitioner, and that the character of a trust would be impressed upon the property in the hands of every succeeding purchaser, not purchasing from or with the consent of your petitioner.

Under these circumstances an ejectment suit was brought in 1882 by your petitioner and her husband, who has since died, to recover this land from the parties in possession, who claimed to hold it for the provincial government under section 47 of chapter 36, of the 4th series of the Revised Statutes of Nova Scotia, and on other grounds. The supreme court of Nova Scotia, before which the case was argued, decided adversely to your petitioner on the merest technical ground, viz., that the legal title was outstanding in a former mortgagee, though the mortgage had been fully paid off forty years previously. An appeal from the decision was taken to the Supreme Court of Canada, and the judgment of the supreme court of Nova Scotia was there upheld, chiefly on the ground that the 47th clause of chapter 36 of the Revised Statutes of Nova Scotia transferred the title to the defendants. Your petitioner and her counsel being dissatisfied with the judgment, caused a petition to be filed in the Privy Council of England for special leave to appeal from this judgment, but in the event of special leave to appeal being denied, or the case being decided by the Privy Council on any technical ground, your petitioner submits that she should not be precluded by special legislation from bringing another action or actions, to have her claim to this property disposed of upon its merits, of which right she would be deprived if the 4th and 5th sections of the Act first above mentioned should become law. Though there is a provision in this Act that it shall not apply so as to interfere with your petitioner in case the special leave to appeal applied for shall be allowed, the application is, notwithstanding, strenuously opposed by the local government, and at their instance the application was postponed by the Judicial Committee of the Privy Council from its last sittings to its next sittings, and counsel are engaged with instructions to offer every opposition to said appeal, and it may be defeated on some technical ground aside from the merits, as it was in the court of Nova Scotia, or because it does not come within the rules upon which appeals are granted in the Privy Council.

Your petitioner has already expended large sums of money to recover this property, yet if defeated in her application for special leave to appeal she is prepared to pay the



defendant's costs before instituting another suit, and as her claim is not vexatiously but legitimately prosecuted, and as it would be against natural justice to legislate her out of her property without compensation, she most humbly submits that the fourth and fifth sections of said Act should be disallowed by your Excellency.

Your petitioner further submits that the legislature of Nova Scotia never before this occasion specially appropriated private property, without providing for an equivalent, and even in such cases not without notice to the owner to show cause against the appropriation before a committee of the assembly or otherwise, whether this happened from a belief that the legislature had not the power to act otherwise, or whether the practice for more than a hundred years binds the legislature, or has become part of the constitutional law of Nova Scotia, your petitioner is unable to say, but she most humbly submits that it ought to weigh as a strong argument in the exercise of your Excellency's prerogative, in preventing an act against natural justice.

Your petitioner annexes hereto a printed copy of said Act and humbly states that in consequence of the absence from the province of her solicitor and it not having come to her knowledge that such an Act was passed until a day or two ago, she was unable sooner to present a petition with reference thereto.

Your petitioner, therefore, humbly prays that your Excellency may refuse your assent to, or disallow the said Act, or the 4th and 5th clauses thereof, with that part of the schedule describing this property.

And your petitioner will ever pray, &c.

MARIA KEARNEY.

#### AN ACT RESPECTING PUBLIC CHARITIES.

*Fourth Clause.*—The Nova Scotia hospital for the insane at Dartmouth, and all the real and personal property and assets of the commissioners of public charities in respect of or in connection with the said provincial hospital for the insane shall on the 1st day of July, 1886, vest in Her Majesty the Queen, her heirs and successors, represented in this behalf by the commissioner of public works and mines.

*Fifth Clause.*—To remove doubts as to the title or otherwise, and for greater certainty, but not so as to restrict the generality of the foregoing section, it is hereby declared and enacted that the lands mentioned in the schedule to this Act were, under chapter 16 of the Acts of 1878, entitled: "An Act to establish a Board of Commissioners of Public Charities," duly vested in said commissioners of public charities, and that the commissioners of public charities had a good, sure, perfect and indefeasible estate of inheritance in fee simple in the said lands, both at law and in equity, freed and absolutely discharged of and from all claims whatsoever, and that the said lands on the 1st day of July, 1886, shall vest in Her Majesty, her heirs and successors, represented in this behalf by the commissioner of public works and mines, in fee simple, and the deeds and proceedings mentioned in said schedule, by means of which said lands were acquired or transferred, are hereby confirmed and made valid. Nothing herein contained shall prejudice the rights of the parties in the suit of Kearney against Creelman, decided in the Supreme Court of Nova Scotia and in the Supreme Court of Canada in case of an appeal to the Judicial Committee of Her Majesty's Privy Council.

*His Honour the Lieutenant-Governor to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, HALIFAX, N.S., 29th November, 1886.

SIR,—Referring to my letter of the 9th of November last, in which I stated that the members of my government had under their consideration several despatches relative to petitions to his Excellency the Governor General praying for the disallowance of certain Acts (chapters 1, 5 and 16) of the legislature of 1886, I have now the honour to forward herewith, copies of the Attorney General's reports thereon, and a certified copy of the minute of council relative thereto approved by me.

I have, &c.

M. H. RICHEY,  
*Lieutenant-Governor.*



## CAP. I.

*Extract from the Hon. the Attorney General's Report approved by His Honour the Lieutenant-Governor in Council on the 26th day of November, 1886.*

*Re* petitions of E. W. Plunkett, Messrs. Markby, Stewart & Co., and the Western Counties Railway Company, praying His Excellency the Governor General to disallow certain Acts of the legislature of Nova Scotia, passed at the last session.

The undersigned has had submitted to him the petition of E. W. Plunkett and supplementary petition of the same party, praying his Excellency the Governor General to disallow chapters 1 and 16 of the Acts of Nova Scotia, 1886. Also the petition of Markby, Stewart & Co., and the resolution and communication of the directors of the Western Counties Railway Company of like purport, which have been forwarded to his Honour the Lieutenant-Governor by the Honourable the Secretary of State.

The memorials and documents referred to contain much that is irrelevant, and as all are substantially the same in their representations and objects, it is scarcely necessary to follow all the statements therein contained, in detail. A general statement of the case is sufficient for a proper view of the action of the government and legislature of this province in respect to the Acts complained of.

The Western Counties Railway is an enterprise which was subsidized by the legislature of Nova Scotia. In 1872 the legislature voted 150,000 acres of Crown lands and a cash subvention of \$30,000 a year for twenty years, for a railway from Annapolis to Yarmouth. In 1874 the legislature changed this, on condition that Digby town should be included in the route, to a subsidy of \$6,000 per mile and 150,000 acres of Crown lands.

The Western Counties Railway Company entered into a contract with the government under this Act, and agreed to construct the whole line in consideration of this subsidy.

In 1875 the legislature granted an additional subsidy of \$2,000 per mile to this railway, without any consideration save a desire to secure the early construction of the work.

By a liberal interpretation of the contract, and the legislation providing these subsidies, the whole of the government cash subsidy was paid out before a mile of road was fully completed, and work ceased about the latter part of 1876.

No further progress was made in this work until 1879, when the government and legislature again came to the rescue. By the scheme of 1879, the company was to call in the issue of \$280,000 of first debenture bonds, and to substitute an issue of first debenture stock as follows:—

(a.) £90,000 of "B" debenture stock, which was to be a first lien on the gross receipts of the Western Division, after paying working expenses.

(b.) £210,000 of "A" debenture stock, which was to form a second lien on the Western Division, and a first lien on the Eastern Division of the railway, which latter division is declared to be the Windsor Branch, so called.

The legislature authorized the government to guarantee the interest on a portion of these bonds sufficient to complete and equip the line between Digby and Yarmouth. Under the authority of this legislation, the company issued the two classes of debenture stock, namely: £90,000 "B" debentures, and £210,000, "A" debentures, and entered into an agreement with the government of Nova Scotia (See Journals, 1880, Appendix No. 7). The leading provisions of this agreement are as follows:—

The government were to guarantee the interest at the rate of five per cent on £50,000 of the "B" debenture stock, in order to raise money for the completion of the road between Digby and Yarmouth, and, by a special clause in the agreement, an additional sum of £5,000, was to be guaranteed to meet pressing demands upon the Company, £55,000, in all.

The company was to deposit with the government as security for this guarantee, £110,000 of the "A" debenture stock, and £40,000 of the "B" debenture stock. It also bound itself to complete, equip and continuously operate the line between Digby and Yarmouth, to maintain a daily steam ferry between Digby and Annapolis, to pay the interest on the bonds guaranteed by the government, and to pay the municipalities of Annapolis and Digby, interest at the rate of seven per cent on the amount paid for right of way on the portion between Annapolis and Digby remaining uncompleted, until the same was finished.

It was stipulated by way of remedy, that if the interest was not paid on the debenture stock guaranteed by the government, the government should have the right to sell all or any part of the securities in its possession, and also to sell the western division of the company's railway without foreclosure. And the company bound itself to make valid any instrument or conveyance which the government might make in pursuance of this power.

After that agreement was entered into the government guaranteed the interest on £55,000, to enable the company to carry out its undertaking. The £110,000, of debenture stock was duly deposited with the government, and also £40,000, of "B" debenture stock. The line between Digby and Yarmouth has been so far completed as to be open for traffic and passengers. But the company has entirely failed to fulfil its obligation to pay the interest on the guaranteed debenture stock, and the government have paid interest every year since the guaranteed stock was issued and sold. Neither has the company paid the interest to the municipalities of Annapolis and Digby as agreed. A large sum of money is now due from the company to the government for accrued interest, which the government have paid for several years.

Such is the present position of the relations between the government and the company. The company is in default, and the government have the right to exercise the powers conferred by the agreement of 16th August, 1879.

Recognizing that the existing conditions of railway communication between Halifax and Yarmouth is now satisfactory, and that it was in the public interest that there should be one completed and consolidated railway under one management, the government entered into an agreement with the Joint Stock Association looking to that end, and said agreement is embodied in chapter 1 of the Act of 1886. In that agreement, the government undertake to exercise their powers for the acquisition of the Western Counties Railway, for the purpose of securing the consolidation. These are powers acquired by agreement with the company, and which the company is estopped from calling in question in any form.

But it will be noted that in the scheme for consolidation embodied in the Acts of 1886, chapter 1, it is provided that compensation to the extent of \$120,000 may be given for private interests in the Western Counties Railway. This is purely a gratuity, as there is no legal or moral obligation resting upon the government to advance one farthing additional to the company. The government stand in the exact position of a mortgagee, whose mortgagor has made default. But so anxious are the government to deal liberally with the company, that they have procured the assent of the legislature to a provision giving them power to appropriate, out of moneys to be raised on the scheme, \$120,000, to be paid to those having interests in the company, in the event of an amicable acquisition being agreed upon.

So far from the Western Counties Railway Company, or Markby, Stewart & Co., or any person holding any preferential stock of the company, petitioning against the disallowance of chapter 1, they should recognize it as an excess of liberality which they have no right to demand, and no reason to expect.

A number of statements are made in the several memorials before me, which require only a passing reference.

Objection is made to the late time at which chapter 16 passed the legislature, and that it was rushed through. It is submitted that in a question of disallowance such matters are not relevant. Every free parliament is a judge of its own procedure. The sole question involved is the constitutionality of the Act, or the constitutional authority



of the legislature to pass it. Whether it is introduced early or late in the session, or whether or not parties likely to be effected by it had notice, seems to be in no way pertinent. At all events the Western Counties Railway Company is not in a position to call in question the legislation, because it only seeks to carry out and effectuate the agreement of 1879, and by section 14 of said agreement it is covenanted that the right of the government shall be protected and secured by such legislation as may be necessary to carry out and effectuate said agreement.

Regarding Mr. Plunkett's several statements it is enough to say, that he has furnished no evidence of his right to speak in the name of any person save himself, and the government are advised that he is but a trifling holder of stock of any kind of the company. His remarks about the value of the Western Counties Railway are preposterous, and not entitled to a moment's consideration. Since the road between Digby and Yarmouth was completed, it has never paid more than ordinary working expenses. There is the best indication that it has been unable to pay working expenses and maintain the road in efficient repair, in the fact that, in order to prevent it being absolutely closed, the government of Nova Scotia had to ask the legislature to vote \$50,000 in 1883, to put the road in such a state as to be run with safety to the public. As at present situate, the Western Counties Railway has no commercial value, inasmuch as it has no earning power. When estimating the net earnings of the whole line between Halifax and Yarmouth at \$100,000 per annum, regard is had to the earning power of other portions of the line than that now operated by the Western Counties Company, and to the improvements which the proposed expenditure of the new company will secure, and the advantages of consolidation promote.

But after all the question of value has very little to do with the subject matter of the memorials. If the Western Counties Railway is of great value, and worth such a large sum of money, it will be easy for the company to raise enough money to pay off the claim of the government, which is comparatively small, and then it will be impossible for the government to exercise the powers contained in the agreement of 1879, and ratified by chapter 16, of the Acts of 1886.

Another expression used by the memorialists is entirely misapplied. Complaint is made that the government are expropriating the Western Counties Railway. This is absurdly incorrect. The government are merely enforcing a security according to the terms of the agreement creating the security. They are only doing what the company themselves agreed they should do, in a case of default.

Speaking then in general terms, the undersigned submits that chapter 1 of the Acts of 1886, is in a measure entirely within the jurisdiction of the legislature of Nova Scotia, which aims to encourage the construction of railways in Nova Scotia proper and Cape Breton, and which especially looks to the completion and consolidation of the western system of the province. The whole Act is fair in its dealing with all railway corporations now existing and having interests in Nova Scotia, and generous to the Western Counties Railway, inasmuch as the government practically assume the liability of the outstanding guarantee. And while fully convinced that the railway and its franchises, and all the debenture stock held would be entirely insufficient to satisfy the government guarantee or interest on \$55,000, which is perpetual, the government have asked and induced the legislature to give a gratuity of \$120,000 to the present company, for the mere consideration of an amicable acquisition.

All of which is respectfully submitted.

J. W. LONGLEY,  
*Attorney General.*

November 9th, 1886.



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*Extract from the Hon. the Attorney General's Report, approved by His Honour the Lieutenant-Governor in Council on the 20th November, 1886.*

CAP. 16.

*Re* petitions of E. W. Plunkett, Messrs. Markby, Stewart & Co., and the Western Counties Railway Company, praying his Excellency the Governor General to disallow certain Acts of the legislature of Nova Scotia, passed at the last session.

The undersigned has had submitted to him the petition of E. W. Plunkett, and supplementary petition of the same party, praying his Excellency the Governor General to disallow chapters 1 and 16 of the Acts of Nova Scotia, 1886. Also the petition of Markby, Stewart & Co., and the resolution and communication of the directors of the Western Counties Railway Company, of like purport, which have been forwarded to his Honour the Lieutenant-Governor by the Hon. the Secretary of State.

The petition of Messrs. Markby, Stewart & Co., refer to the deposit of £45,300 with the government in July, 1879, upon the terms of a letter addressed by Mr. F. Gundry, manager of the Bank of Montreal, to the provincial secretary of that day, which terms were agreed to by the then provincial secretary. This £45,300 was part of the £110,000 of "A" debenture stock, of which, by terms of the agreement of 1879, was to be deposited with the government as a condition precedent to the guarantee. How far the provincial secretary of that day was authorized to make any conditions in regard to the acceptance of this stock, is a matter which need not be discussed. It is sufficient to say that the government fully recognize the conditions embodied in Mr. Gundry's letter, regard them as binding upon the province, and will respect them fully and unreservedly. What there is contained in chapter 16 of the Acts of 1886, which is inconsistent with, or amounts to a violation of the terms of that letter, is not apparent. Nothing of the kind was intended, and the undersigned is compelled to say that in his opinion no such violation can be discovered in the whole scope of said Act, or in any particular clause or line thereof.

As regards chapter 16 of the Acts of 1886, the undersigned submits that it is merely a ratification of the agreement of 1879, with the added authority to the provincial secretary, to purchase said railway for the province if deemed expedient. The said Act is quite within the authority of the Nova Scotia legislature. The Western Counties Railway is estopped by its own agreement from opposing it, as before indicated.

As the agreement of 1879 was very ample in its powers, it may be doubted if legislation was necessary to its enforcement. The government were advised that it should be safer to have the agreement ratified by parliament, and it is difficult to comprehend how the interests of any of the memorialists are prejudiced or effected by an Act, which simply ratifies and confirms an agreement admittedly binding upon the company and debenture holders.

Clause three, however, of the said chapter 16, gives the provincial secretary the right to sell either by public auction or sale, or by private contract, at his discretion, and at or for such sums of money as he shall judge sufficient, the securities, and also the western division, to the person or persons purchasing the same. It may be contended that this is a large and unusual power. It is submitted, however, that the provincial secretary, being a public official, and representing the Crown, can be trusted to exercise such a power fairly and in the public interest, and with a due sense of the moral responsibilities which it involves. This was evidently the view of the legislature. Nevertheless, as some parties who have interests involved, may fancy that their rights are liable to be prejudiced by the exceptional powers therein conferred, I would recommend that his Honour the Lieutenant-Governor be advised to order that the powers therein conferred on the provincial secretary be not exercised, without due notice to all parties concerned, and, if not exercised in the meantime, that the government recommend to parliament, if any parties concerned desire it, at the next session, such amendments to

said section three, as will prevent the possibility of any action, until after ample notice to the parties concerned, and to the world. With this assurance, in regard to the operation and enforcement of section three of the said chapter 16, the undersigned submits that in the public interests, both chapters 1 and 16 should be left to their operation.

All of which is respectfully submitted.

J. W. LONGLEY,

9th November, 1886.

*Attorney General.*

*Report of Honourable Attorney General Longley upon Chapter 5, approved by His Honour the Lieutenant-Governor in Council on the 26th November, 1886.*

HALIFAX, N.S., 10th November, 1886.

*Re* petition of Maria Kearney praying his Excellency the Governor General to disallow the fourth and fifth sections of chapter 5 of the Acts of Nova Scotia, 1886. The undersigned has had under consideration the above memorial of Maria Kearney and begs to submit as follows:—

The land in question is the site upon which stands at present, and has stood for many years, the Nova Scotia Hospital for the Insane, a structure worth some hundreds of thousands of dollars, and containing several hundred inmates.

The property was acquired by the government of Nova Scotia in a regular and legitimate manner by purchase, and the title was certified, as the undersigned is advised, by the law officer of the Crown at the time of the purchase. A fair reasonable market value was paid for the property.

After its acquisition the government proceeded to erect large and costly buildings upon it, which have been extended from time to time, until now the said buildings, which have been occupied from the first as the provincial hospital for the insane, are the largest in the province.

The validity of the title to the land so acquired as aforesaid was never called in question during all the many years between its acquisition and the year 1882, when the petitioner began suit for the recovery of the land and all the buildings thereon.

The suit was tried and judgment given, after full investigation, in favour of the Crown. Appeal was had to the Supreme Court *in banco* in Nova Scotia and the judgment given in *Nisi Prius* was confirmed. The case was then carried by the plaintiff, the present memorialist, to the Supreme Court of Canada, and after argument, the judgment of the Supreme Court of Nova Scotia in favour of the Crown was affirmed.

Application has been made to the Judicial Committee of the Privy Council for leave to carry the action to that court for final determination.

The clauses of the Act in question distinctly declare that nothing shall be enacted to interfere in any way with the rights of the plaintiff before the Judicial Committee of the Privy Council, and the clauses complained of have no bearing on the present suit.

It is submitted, however, that the public interests require that the title to this public land should be set finally at rest. The land originally was purchased for a very small sum, and its value was and is quite trifling. But large and valuable buildings more than a hundred times more costly than the land, have been erected upon it for public purposes, and as the government acquired the land, not by expropriation, but by regular purchase for fair value, it is submitted that it would be entirely opposed to the public interest that, on the merest technicality, the province should be harassed without limit by vexatious suits.

Admitting to the farthest, the claim of the petitioner that there was a trifling flaw in the title, it is submitted that the public interests require that the title be set at rest, since a valuable public institution, on which hundreds of thousands of dollars of the public moneys of the province have been expended is involved. But it must be borne in mind that every court before which the matter has been presented, argued and



adjudicated, has pronounced adversely to the pretended claims of the petitioner. If the Judicial Committee of the Privy Council should determine to entertain the appeal, and should reverse the judgments of the courts below, the petitioner will have ample remedy. And nothing in the sections complained of abridges this in any sense. If the Judicial Committee of the Privy Council decline to entertain the appeal, or entertaining it, confirms the judgment, it is submitted that this ought to settle the question, and put an end to the meritless and vexatious pretensions of the petitioner.

It is submitted that the Act is within the legislative authority of the legislature of Nova Scotia, relating as it does to property and civil rights, and attention is respectfully directed to the fact that the remainder of the Act deals with most important public matters, relating to the humane institutions of the province, the disallowance of which would involve most serious consequences.

J. W. LONGLEY,  
*Attorney General.*

*Mr. H. McD. Henry, Q.C., to the Minister of Justice, re Chapter 3.*

HALIFAX, 13th January, 1887.

SIR,—I have the honour to submit the reasons contained herein, for the disallowance of an Act of the legislature of Nova Scotia, entitled the "Liquor License Act, 1886," passed on the 14th May, A.D. 1886, and chaptered 3. This application is made for a large number of liquor dealers in the city of Halifax, who are my clients in this behalf.

The Act in question purports to be an Act to regulate the trade in spirituous liquors within the province of Nova Scotia. It is respectfully submitted that its provisions are not intended in good faith to regulate such traffic, but under the guise of regulation, virtually to prohibit all sale of intoxicating liquors in this province. Also, as I shall seek to show, it encroaches upon the recognized powers of the parliament of Canada with respect to trade and commerce.

Permit me, in the first place, to direct your attention to those provisions which tend to bear out the statement already made that the Act is, in its essence, prohibitory. Without pausing to notice many details, which are highly vexatious and subversive of trade, introduced here for the first time into any statute within the Dominion, I beg to call your attention to section 10: "The petition must be accompanied by a certificate signed by two-thirds of the ratepayers of the polling district in which the premises sought to be licensed are situated. Such polling district shall be that established by law for the purposes of an election for the House of Assembly, or if none such be established, then the polling district used for the last election for the House of Assembly."

It is respectfully submitted that the foregoing provisions are prohibitory. The principle of placing in the hands of people, wholly irresponsible, the power of preventing all trade in any commodity is one which, it is submitted, should be jealously watched in all cases, but when, as in this case, power is placed in the hands of a minority to control the majority, through the simple process of abstaining from any action, and wholly to refuse the right to carry on trade in any article, the provision is highly oppressive, and clearly prohibitory. We may easily conceive a case, which, indeed, has actually occurred in this country, where two-thirds of the ratepayers, minus one, petitioned for a certain license to be granted, the fact that one third of such ratepayers, plus one, omitted signing such petition, rendered the issuing of such license illegal. A provision of this character in a statute of New Brunswick has been judicially decided to be *ultra vires* by a court, over which the present chief justice of the Supreme Court of Canada presided. See *Reg. vs. Kings*, 2 Cartwright. I would urge that, if such a power resides in the legislatures of the provinces, one step more would enable them to effect, not only virtual prohibition, such as this, but literal and actual prohibition, by requiring not two-thirds only, but an unanimously signed petition.



So soon as the Privy Council decided, as it did in the *Queen vs. Russell*, the *Queen vs. Hodge*, and the Canadian liquor license case, that prohibition was for the parliament of Canada, the whole ground would seem to be covered. If the local legislature cannot itself prohibit, it cannot, it is submitted, delegate the power of prohibition to others. It may delegate to others any power which it possesses, but it cannot delegate to another body, or any person or persons, a function which it does not possess. Without going into the question whether a recommendation of one or more may not be a reasonable regulation of the issuing of licenses, it is submitted that a provision such as the one in question is in its essence, prohibitory, and therefore, void.

Next, the Act is literally and actually prohibitive in one particular, which is urged against its validity. By section 5 it appears that all sales (with one or two trifling exceptions) in quantities less than a pint are forbidden. I cannot see how an Act which provides that merchandise shall not be sold in certain quantities, can be said to be other than a prohibitory one. A pint, of course, is a small quantity, and yet is not a greater quantity than the majority of buyers are accustomed to purchase. If no smaller quantity than a pint may be sold, the same power could forbid sales in quantities less than a gallon, and so on in an ascending scale, until, though the title of the Act might be that of an Act to regulate or encourage the sale of liquors, it would in effect be as subversive of the traffic, as though the whole Act were comprised in one sentence, simply forbidding the purchase or sale of that commodity. Being nominally prohibitory, to this extent at least, it comes nominally under the principle laid down by the Privy Council in *Russell vs. the Queen*. Any attempt to show from the whole Act that it is intended to regulate only, and that this provision is merely a regulation, and not, as it seems to be, a prohibition, will result only in showing that all the provisions of the Act tend in the same direction. Those which have the strongest claim to be regarded as being in the category of regulations are here so strained as to make any traffic in liquor almost an impossibility. This provision is here introduced for the first time into any Act which has been before the courts.

By section 58, subsection 2, brewers and distillers, duly licensed under the Inland Revenue Act to manufacture fermented or spirituous liquors, are required, before selling the same, to take out a license under this Act. Such a provision tends to abridge, and, if such power resides in the local legislatures, may be used to put an end to that source of revenue, which it is unquestionably the prerogative of the Dominion parliament to create.

At the least it conflicts with such prerogative, and it is here contended that the local legislatures cannot pass laws conflicting in any way with the laws of Canada. The parliament of Canada has the exclusive right to make laws relating to revenue, and it surely could not have been intended by the imperial parliament when passing the British North America Act, that the amount of the internal revenue, so to be raised, should depend on the caprice of each of the provinces, yet it must depend on such caprice, if the business may be weighted down by an additional license fee, rendering the business not worth pursuing. It is therefore submitted that there are special grounds for holding the provisions of the Act to be *ultra vires* as regards brewers, beyond the other grounds upon which it is herein contended that the Act should be disallowed.

I have, &c.,

HUGH McD. HENRY.

*Report of Hon. Attorney General Longley upon Chapter 3, approved by His Honour the Lieutenant-Governor in Council on the 5th May, 1887.*

*Re Nova Scotia Liquor License Act of 1886.*

Regarding the application of Mr. H. McD. Henry, Q.C., to the Honourable the Minister of Justice, asking for the intervention of his Excellency the Governor General to disallow the Act of the legislature, which has been communicated to his Honour the Lieutenant-Governor, by the Honourable the Secretary of State for Canada, the undersigned has the honour to report as follows:—

It is not deemed necessary to enter into any elaborate discussion of the several points so clearly raised and so forcibly presented by Mr. Henry.

The British North America Act, section 92, subsection 9, defines one of the subjects which come exclusively within the jurisdiction of the provincial legislature as follows:—"Shop, saloon, tavern, auctioneer, and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes."

The interpretation of this clause has elicited endless controversy by the best legal minds in the Dominion, and the best that can be said in regard to its determination is that the Privy Council have decided at last that Acts regulating the sale of intoxicating liquors by license, come within the exclusive jurisdiction of the provincial legislatures.

Such being the judgment of the ultimate authority on the interpretation of the British North America Act, it is difficult to define the point at which this power to regulate ends.

If the provincial legislatures have the right to fix the conditions under which licenses can be issued or granted, it is by no means unreasonable to assume that they may, within the scope of their jurisdiction, impose such conditions as would make the obtaining of license practically impossible. The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in section 92, is distinctly given by the British North America Act.

There seems to be no limit to this authority, and the same objections which are open to the severity of the conditions upon which licenses are granted, might be urged against the severity of the penalties imposed. But, in both cases, the undersigned is not aware of any limit.

It seems to the undersigned that the burden of Mr. Henry's objections are more to the propriety of the measure than to its validity. The gravamen of the charge against the Act is, that the legislature have carried their restrictions to such a length that licenses are practically impossible to obtain.

No authority is given to show that the power is carried beyond the limit which the British North America Act contemplates.

In regard to the objections that the limitation of the sale to quantities not less than a pint involves something which would interfere with trade and commerce, and therefore trench upon a matter within the exclusive jurisdiction of the Federal Parliament, the undersigned submits that some power of regulation must be incident to a license system, and it seems that the provisions in the Act come in the classes of legislation which are within the powers of the provincial legislature.

All of which is respectfully submitted.

J. W. LONGLEY  
*Attorney General.*

HALIFAX, 23rd March, 1887.

*Messrs. Meagher, Drysdale & Newcombe, to the Honourable the Minister of Justice, re Chapter 56.*

HALIFAX, N.S., 30th July, 1886.

Sir,—At the last session of our local legislature an Act was passed, chapter 56 and entitled "An Act concerning the collection of freight, warehouse and wharfage charges," and it is our intention at an early day, on behalf the Eastern Development Company (Limited) and o' hers, to memorialize your department to have that Act disallowed, and the object of this letter is merely to call your attention to it.

The Act in question, we have good reason for believing, was prepared at the instance of the Honourable Alexander McKay, M.L.C., from South Sydney, and was promoted and passed at his instance and for his benefit.

In the month of December last the Eastern Development Company (Limited), who are operating their copper mines at Coxheath, in Cape Breton County, imported from the States a quantity of machinery for the purpose of their mines, of the value of about seven thousand dollars. When this machinery arrived the season was so far advanced that they could not place it at their mines until this spring, and they requested the collector of customs at that port to permit them to place it in some store or upon some wharf, to be considered as a sufferance warehouse, until the opening of the spring. This permission was granted, and the property was accordingly placed upon the wharf of Mr. McKay. You are aware, of course, that the harbour of North Sydney is closed to navigation from the month of December until May, and often during the greater part of May, and that consequently Mr. McKay could make no use whatever of the wharf in the meantime. Early in the month of June, in the present year, and when the company were about to take steps for the removal of this property to their mine, they discovered a notice in the North Sydney *Herald*, inserted by Mr. McKay, of the sale of the property to meet his claims for wharfage and storage. The value of the property, as we stated, is about seven thousand dollars, and Mr. McKay's claim for wharfage and storage for the period intervening between the time of the goods being landed on his wharf in December and the end of May, amounts to \$1,406.64, and we have no doubt whatever that Mr. McKay procured the passage of this Act to enable him to make the grab in question.

You will notice that the Act professes to legalize the tariff agreed to between the various wharf owners in Halifax, and under it Mr. McKay's claims—under the words—"All articles put upon the wharf to be at the risk of the owner of the goods and not the proprietor of the wharf, and if not removed in 48 hours to be subject to a repetition of the same wharfage as in the first instance, and so on for every forty-eight hours until they shall be removed;" the right to double the wharfage every forty-eight hours.

Merchants, wharf-owners, and others handling goods here denounce the whole proceeding, and speak of it as an outrage of the worst kind.

We merely write this to call your attention to the Act, and we will, at an early day, as soon as we can communicate with the company, prepare a formal remonstrance against the allowance of the Act in question.

Yours truly,

MEAGHER, DRYSDALE & NEWCOMBE.



*Report of the Honourable the Minister of Justice upon Chapter 56, approved by His Excellency the Governor General in Council on the 11th April, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th March, 1887.

*To His Excellency the Governor General in Council :—*

The undersigned has the honor to report that, by the Act of 49 Victoria, 1886, chapter 56, intituled "An Act concerning the collection of freight and wharfage and warehouse charges," the legislature of Nova Scotia has, with a few changes and additions re-enacted the provisions of the Merchant Shipping Act Amendment Act, 1867, relating to the delivery of goods, and lien for freight (ss. 66, 77). The latter Act by its terms, is to be construed with, and to form part of the Merchant Shipping Act, 1854, by the 547th section of which it is provided that the legislative authority of any British possession shall have power by any Act or Ordinance, confirmed by Her Majesty in council, to repeal wholly or in part, any provisions of the Act relating to ships registered in such possession, but no such Act or Ordinance shall take effect until such approval has been proclaimed in such possession, or until such time thereafter as may be fixed by such Act or Ordinance for the purpose. Acting within these powers and the exclusive legislative authority conferred upon it by the 91st section of the British North America Act, 1867, the parliament of Canada has from time to time passed Acts respecting navigation and shipping, and trade and commerce, in its relation to these subjects. Subject to this legislation the Merchant Shipping Act, 1854, and its amending Acts are in force in Canada.

In the opinion of the undersigned the legislature of the province of Nova Scotia exceeded its powers in passing the Act under consideration, and he therefore recommends that it be disallowed.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

Proclamation disallowing the above mentioned Act published in the *Canada Gazette* on the 11th day of April, 1887, vol. xx, No. 43, page 1924.

*Report of the Honourable the Minister of Justice upon Chapter 1, approved by His Excellency the Governor General in Council on the 13th January, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th January, 1887.

*To His Excellency the Governor General in Council :—*

The undersigned has the honour to submit his report upon chapter one (1) of the Acts of the legislature of Nova Scotia, passed in the session held in the year 1886, intituled: "An Act to authorize certain grants in aid of railways, and provide for the completion and consolidation of the railways between Halifax and Yarmouth."

Certain petitions have been received praying for the disallowance of this Act, which have been submitted to the Lieutenant-Governor of Nova Scotia, who has favoured your Excellency with the views of his advisers with respect thereto.

The undersigned, after a consideration of all the papers, and being of the opinion that the Act is within the competency of the legislature of Nova Scotia, recommends that it be left to its operation.

The undersigned also recommends that in communicating to the Lieutenant-Governor of Nova Scotia the fact that the Act has been left to its operation, he be informed that no inference is to be drawn therefrom that your Excellency's government concur in the

recital contained in the 3rd paragraph of the 12th section of the said Act, nor in any manner admit any liability to the government of Nova Scotia for any subsidies, moneys or aids heretofore granted, or that may hereafter be granted by that province in connection with the lines of railway mentioned in the 20th section of the said Act.

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th April, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th March, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration his report on the Acts passed by the legislature of the province of Nova Scotia in the session of 1886, authentic copies of which were received by the Secretary of State on the 15th September last.

1. Chapter 1, intituled : "An Act to authorize certain grants in aid of railways, and to provide for the completion and consolidation of the railways between Halifax and Yarmouth," was left to its operation by an Order in Council dated the 13th day of January, 1887.

2. Chapter 2, intituled : "An Act to incorporate the Halifax and Great Western Railway Company," chapter 16, intituled : "An Act respecting the Western Counties Railway Company," and chapter 36, intituled : "An Act concerning the collection of Freight, and Wharfage and Warehouse Charges," will be made the subjects of separate reports.

3. To Chapter 3, intituled : "An Act respecting the sale of intoxicating liquors," objection is taken by Mr. Henry, acting for a large number of liquor dealers in the city of Halifax.

A communication on the subject was addressed to the Lieutenant-Governor of Nova Scotia on the 22nd day of January last, but with the exception of a formal acknowledgment, no reply has been received.

4. To the fourth and fifth sections of chapter 5, intituled : "An Act respecting Public Charities," it is objected by Mrs. Maria Kearney, by her solicitor, Mr. T. J. Wallace, that they were enacted with the intention chiefly to prevent her from recovering the land described in lot 1, in the schedule to the said Act mentioned. The undersigned submitting herewith Mrs. Kearney's petition and the answer of the government of the province of Nova Scotia thereto, and being of opinion that the Act is within the legislative authority of the legislature of that province, recommends that it be left to its operation.

5. By the 15th section of chapter 81, intituled : An Act to provide for the management and improvement of the cemetery in Upper Stewiacke, in the county of Colchester," it is among other things provided that "any person who shall wilfully destroy, injure or carry away any fence, gate, monument, mound, embankment, tree or plant, or other property, in or upon the lands or burial grounds of the corporation, whether there naturally, or the work of art, shall be punished by a fine of not less than five dollars nor more than fifty dollars, to be recovered upon summary conviction before any two justices of the peace for the county of Colchester, &c." Every such wilful destruction or injury is already punishable under the general criminal law, respecting malicious injuries to property. (R. S. C., c. 168, ss. 23, 24, 27, 42, 58 and 59), and every such wilful carrying away, under the Larceny Act (R. S. C., c. 164, ss. 17, 19, 21 and 85). Apart from the question of legislative authority and the fact that the provision is unnecessary, there is the further objection that enactments of this character should not be inserted in private Acts, but should appear in the public general law, in order that every one may have the fullest opportunity of being aware thereof.

These observations are equally applicable to the following Acts :

(a.) Chapter 136, intituled : "An Act to incorporate the Forest Hill Cemetery Company, county of Colchester," section 14.

(b.) Chapter 147, intituled "An Act to incorporate the Trustees of South Brook Cemetery, in the county of Inverness," section 15 ; and

(c.) Chapter 168, intituled : "An Act to incorporate the Plymouth Cemetery Company," section 18.

The undersigned is of opinion that the legislature of Nova Scotia should be afforded an opportunity of amending the Acts mentioned, either by striking out of the sections referred to as objectionable provisions, or by repealing the sections, and embodying in a general statute, applicable to all cemeteries, such of the remaining provisions as are thought necessary, and within its legislative authority.

6. Section 176 of chapter 86, intituled : "An Act to amend the Acts relating to the town of Dartmouth," by which a peace officer is given authority to arrest without warrant, persons committing certain offences, not only trenches upon the criminal law, but is unnecessary, as such officers, by the Revised Statutes of Canada, Chapter 174, section 24, have the power so to arrest in any case in which a person is found committing any offence punishable either upon indictment or upon summary conviction. The undersigned thinks the section should be repealed.

By the 182nd section of the same Act, it is provided that all fines and forfeitures collected in the stipendiary magistrates' court or in the police office of the town, shall be paid into and form part of, the general revenues of the town. In view of the jurisdiction of the stipendiary magistrate of Dartmouth, under the criminal law and other statutes of Canada, this section should be so amended as to limit its application to fines and forfeitures subject to the legislative authority of the legislature, which clearly has no power of disposition over fines and forfeitures recoverable or enforceable under any Act of the parliament of Canada.

By the 192nd section of the same Act, the town council of Dartmouth is given power to make by-laws to regulate, among other things, the following subjects :—

(5.) The use and management of docks, wharfs, landings and cranes, and fixing the rate of dockage, wharfage, and cranage in all cases within the town.

(6.) The weighing and measurement of salt, coal and wood, lumber, shingles, logs, timber and hay, straw and grain, and fixing the rates therefor.

(15.) The prevention of vice, immorality and indecency in the public streets, highways and other public places, and prevention of profanation of the Sabbath.

(20.) Regulation of the discharging and depositing of ballast in all portions of the harbour of Halifax.

The 20th paragraph should, the undersigned thinks, for obvious reasons, be repealed, and the 5th confined to docks, wharfs, landings and cranes, which are the property of the town, or, if extended to those which are owned by private persons, should be so extended, subject to any legislation at any time enacted by the parliament of Canada, respecting trade and commerce, navigation and shipping, or public harbours, which, by the British North America Act, 1867, and the decisions of the Supreme Court of Canada in *Holman vs. Green*, are the property of Canada, and as such, would not be subject to legislation by the legislature of a province.

The 6th and 15th paragraphs may, the undersigned thinks, be treated as a delegation to the town council, of police powers, and not as an attempted delegation of powers of legislation respecting weights and measures and the criminal law, and as such open to serious objection.

The observations made respecting chapter 86 apply also to chapter 98, intituled : "An Act to incorporate the town of Kentville," and chapter 105, intituled : "An Act to consolidate and amend the Acts relating to the town of New Glasgow." The corresponding sections of the several Acts are as follows :—



Chap. 86, s. 176	Chap. 98, s. 238	Chap. 105, s. 229
“ s. 182	“ s. 244	“ s. 235
“ s. 198	“ s. 253	“ s. 241
“ p. 5	“	“ p. 5
“ p. 6	“ p. 5	“ p. 6
“ p. 15	“ p. 15	“ p. 16
“ p. 20	“ p. 20	“ p. 21

The undersigned recommends that the substance of this report if approved, be communicated to the Lieutenant-Governor of Nova Scotia, and that your Excellency defer for the present, the further consideration of chapters 3, 81, 86, 98, 105, 136, 147 and 168.

The undersigned further recommends that the Acts, the chapters of which are given in the annexed schedule, be left to their operation, and that the Lieutenant-Governor of Nova Scotia be informed thereof.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

#### SCHEDULE.

Chapters 4 to 15, 17 to 55, 57 to 80, 82 to 85, 87 to 97, 99 to 104, 106 to 135, 137 to 146, 148 to 167.

*Secretary Department Railways and Canals to Deputy Minister of Justice.*

DEPARTMENT OF RAILWAYS AND CANALS, OTTAWA, 20th May, 1887.

SIR,—I am instructed to return to you, herewith, the copy of the statutes of the province of Nova Scotia, for the year 1886, transmitted with your letter of the 30th March, and to inform you that the attention of the Minister has been called to chapter 2 therein, intituled: “An Act to incorporate the Halifax and Great Western Railway Company,” with respect to which you desire to have his views.

I am to state that many of the provisions of this Act appear to the Minister to be of a somewhat extraordinary nature, and that the question as to whether the Act should be allowed in its present shape, would seem to demand consideration.

He is of opinion, however, that the Department of Justice is in a better position than his own to decide upon the proper action to be taken in this matter.

I have, &c.,

A. P. BRADLEY,  
*Secretary.*

*Hon. Attorney General Longley to the Hon. the Minister of Justice.*

HALIFAX, 10th June, 1887.

MY DEAR SIR,—You will recollect, perhaps, of the objection made by Markby Stewart & Co., to an Act of 1886, chapter 16, respecting the exercise of our power of sale of the Western Counties Railway. You kindly forwarded, through the Honourable the Secretary of State, a copy of the objections, which our government on a report from me, answered. In that answer, if you will be good enough to refer to it, you will see that I recommended that at the then ensuing session of our legislature, an amendment should be made to the Act complained of providing that the powers therein given to the Provincial Secretary should only be exercised after due and ample notice, and this was approved by the Lieutenant-Governor.

I take this early opportunity of forwarding you the advance sheet of the amending Act, since the whole volume of the Acts will not be published for some time yet, in order that you may be assured that this recommendation was carried out fully. I think this amendment removes the gravamen of the objection to chapter 16.

I may add that I introduced and carried through the House, a bill, eliminating from the Revised Statutes, a number of clauses objected to in your report on the fifth series, and also after the receipt of your report respecting objectionable clauses in the incorporation of cemeteries. I procured the passage of an Act striking out those clauses in the Acts of last session, and I had similar clauses eliminated from the Acts before the legislature during the session just ended.

Very sincerely,

J. W. LONGLEY.

*Attorney General.*

*Memo. re Disallowance.*

In regard to the communication of his Honour the Lieutenant-Governor of this date, touching certain sections of chapters of the Acts of 1886, to which objection had been taken by the Hon. the Minister of Justice, I beg to make the following observations:—

The report of the Honourable the Minister of Justice to his Excellency the Governor General, dated 30th March, 1887, was fully considered by this department.

The suggestions touching chapters 81, 136, 147 and 168 were adopted, and a bill submitted to the legislature last session repealing the several objectional clauses therein referred to.

Chapters 86, 98 and 105 were not dealt with for this reason. It was pretty generally understood and recognized, that it would become the duty of the government at the next session of the legislature to bring forward a general measure relating to the incorporation of towns in Nova Scotia. It seems to be an unsound policy to allow each town to get its own particular Act, and it is proposed to substitute for this, a general measure applicable to all towns now incorporated or hereafter to be incorporated. In such a measure due care would be taken not to trench upon provisions outside the authority of this legislature.

It must be understood that in not submitting to the legislature a measure at the last session to repeal the clauses objected to by the Minister of Justice, no implication should be drawn that this government upholds the validity of these sections. But as the whole matter was likely to be dealt with so soon, it was not deemed expedient or necessary, to raise the question at the last days of the session.

In the event of the government of this province not being ready to submit a general measure relating to town incorporation at the next session, I shall recommend that a measure be submitted to the legislature in the direction of removing from the chapters in question, any clauses which are *ultra vires*.

J. W. LONGLEY,

HALIFAX, N.S., 17th August, 1887.

*Attorney General.*

*Report of the Honourable the Minister of Justice upon Chapters 2, 3, 16, 81, 136, 147, 168, approved by His Excellency the Governor General in Council on the 17th September, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th September, 1887.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to submit a further report on certain Acts passed by the legislature of the province of Nova Scotia in the session held in the year 1886 (49 Victoria).

1. Chapter 2, "An Act to incorporate the Halifax and Great Western Railway Company."

Some of the powers given to this company appear to the undersigned to be of an unusual character, in this view the Minister of Railways and Canals concurs, but as the enactment is probably within the powers of the legislature, and as the undersigned has no reason to apprehend that any serious public inconvenience will be occasioned by leaving the Act to its operation, he recommends that the Act be so left to its operation.

2. Chapter 3, "An Act respecting the sale of Intoxicating Liquors."

Mr. Hugh McD. Henry, Q.C., by his communication of the 15th of January, 1887, on behalf of liquor dealers of the city of Halifax, has asked that this Act be disallowed on the grounds:

(a.) That its provisions are not intended in good faith to regulate the traffic in intoxicating liquors, but under the guise of regulation virtually to prohibit all sale therein; and

(b.) That it encroaches upon the recognized powers of the parliament of Canada in respect to trade and commerce.

A copy of Mr. Henry's communication having been transmitted to the Lieutenant-Governor of Nova Scotia, a minute of his Executive Council on the subject was approved by him on the 5th May, 1887, and a copy thereof was forwarded to your Excellency and forms part of the papers submitted with this report.

The views of the dealers who are opposed to the enactment were further presented to the undersigned, by counsel who attended at Ottawa for that purpose.

Attention has been especially called to the following sections:—

(1.) Section 5 makes provision for hotel, shop and wholesale licenses only, and does not authorize the issue of saloon or other licenses, under which liquors can be sold for consumption on the premises, in any place other than an hotel. In the case of a hotel license the quantity sold cannot exceed one quart, and the sale cannot be made to a person who is not a *bona fide* guest or lodger in the hotel.

(2.) Section 10, which is follows:—

"In the case of an application for a hotel or shop license in the city of Halifax the petition must be accompanied by a certificate signed by three fifths of the ratepayers of the polling district in which the premises sought to be licensed are situated; and in the case of an application for a wholesale license in said city, petition must be accompanied by a certificate signed by a majority of the ratepayers of the polling district in which the premises sought to be licensed are situated; and in the case of an application for a hotel, wholesale or shop license, elsewhere than in the city of Halifax, the petition must be accompanied by a certificate signed by two thirds of the ratepayers of the polling district in which the premises sought to be licensed are situated. Such polling district shall be that established by law for the purpose of an election for the House of Assembly, or if none should be established, then the polling district used for the last election for the House of Assembly."

(3.) Section 58, subsection 2, which is as follows:

(After making provision as to the breweries licensed by the government of Canada.)

"Such a brewer, distiller or other person, is, however, further required to first obtain a license to sell by wholesale under this Act, but a brewer shall not be required in order to obtain such license, to get a petition under section 10 of this Act. The liquor so manufactured by him, when sold for consumption within this province, under which license the said liquor may be sold by sample or in original packages, in any municipality as well as in that in which it is manufactured, but no such sale shall be in quantities less than those prescribed in a wholesale license."

And also all other provisions which are said to interfere directly with trade, and, it is urged, should not be treated as merely regulating the sale of intoxicating liquors.

It is clear that section 58, subsection 2, is not within the legislative authority of the legislature of Nova Scotia. The decision of the Supreme Court of Canada in *Servern vs. the Queen* (2 S. C. R. 71) supports this view.

The other objections raised by counsel for the petitioners raise some doubts as to the validity of other sections of this enactment, especially when their direct effect upon trade is considered.



The Act, however contains many provisions for the regulation of the sale of intoxicating liquors, which appear to be clearly within the powers of the legislature.

Some of these are important, and the disallowance of the enactment would, without doubt, produce considerable public inconvenience within the province of Nova Scotia.

The undersigned therefore, after careful consideration, recommends that the Act be left to its operation, but that the Lieutenant-Governor of the province be requested to call the attention of his advisers again to the Act, with a view to the amendment or repeal of such of its provisions as are of doubtful validity, and especially with a view to the repeal of the 2nd subsection of section 58 before quoted, in order to prevent the litigation which must otherwise inevitably ensue, with all its attendant consequences.

3. Chapter 16, "An Act respecting the Western Counties Railway Company."

By the 3rd section of this Act the Provincial Secretary of Nova Scotia is authorized to make sale and absolutely dispose of, either altogether or in separate parcels, at one time or at separate times, and either at public auction, sale, or by private contract, at his discretion, and at or for such sums of money as he shall judge sufficient, among other things, £110,000 sterling of the debenture stock of the western division of the Western Counties Railway Company deposited with the provincial secretary as collateral security for the guarantee of interest on certain debenture stock of the said company.

To this Act objection has been taken by Messrs. Markby, Stewart & Co., of London, England, the proprietors of £45,300, a portion of the £110,000 debenture stock above referred to.

They claim that the said sum of £45,300 of debenture stock was not deposited with the provincial secretary under the terms of the agreement recited in the Act in question, but in accordance with the terms of the letter addressed by Mr. F. Gundry, then manager of the Bank of Montreal at Halifax, to the provincial secretary, dated 16th August, 1879.

In that letter Mr. Gundry stated to the provincial secretary that in compliance with instructions received from Messrs. Markby, Stewart & Co., he begged to hand to him therewith script for £45,300 sterling for "A" debenture stock of the Western Counties Railway Company of Nova Scotia, and that this script was made out in the name of the provincial secretary and was to be held by him as collateral security for the provincial guarantee of £50,000 sterling of "B" debenture stock of the said company.

The correspondence on this subject was duly transmitted to the Lieutenant-Governor of Nova Scotia, and the views of his advisers obtained thereto.

This correspondence has led to an amendment of the 3rd section of the Act in question (49 Victoria, chapter 16), by which it is provided "that no such sale either by public auction or private contract, shall be held or take place unless and until the provincial secretary shall have given public notice of such sale, at least thirty days beforehand, stating the time and place of such proposed sale, which notice shall appear in the *Royal Gazette* for at least four issues, and in at least two daily papers published in the city of Halifax, and in one or more newspapers published in Yarmouth, in as many as four issues of each of the said papers.

The undersigned does not understand Messrs. Markby, Stewart & Co., to contend that the Western Counties Railway Company has not made default in respect of the provincial guarantee of £50,000 sterling of "B" debenture stock of the said company, and having considered carefully the whole correspondence does not feel himself justified in recommending your Excellency in council to disallow the Act in question.

The undersigned therefore recommends that the Act be left to its operation.

4. Chapter 81, "An Act to provide for the management and improvement of the cemetery in Upper Stewiacke, in the county of Colchester."

Chapter 136, "An Act to incorporate the Forest Hill Cemetery Company, county of Colchester."

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Chapter 147, "An Act to incorporate the Trustees of South Brook Cemetery, in the county of Inverness."

Chapter 168, "An Act to incorporate the Plymouth Cemetery Company."

The above mentioned Acts having been amended in accordance with the suggestions made in the report of the undersigned of the 30th March last, he recommends that they be left to their operation.

5. Chapter 86, "An Act to amend the Acts relating to the town of Dartmouth."

Chapter 98, "An Act to incorporate the town of Kentville."

Chapter 105, "An Act to consolidate and amend the Acts relating to the town of New Glasgow."

With reference to the suggestions made in respect to these Acts in his report of the 30th March, 1887, above referred to, the undersigned begs to direct attention to the memorandum of the Attorney General of Nova Scotia of the 17th of August, in which the Attorney General states that chapters 86, 98 and 105 were not dealt with for the reason that it was pretty generally understood and recognized, that it would become the duty of the government of Nova Scotia at the next session of the legislature to bring forward a general measure relating to the incorporation of towns in Nova Scotia; that it seems to be an unsound policy to allow each town to get its own particular Act, and that it was proposed to substitute for this a general measure applicable to all towns then incorporated, and that in such a measure due care would be taken not to trench upon provisions outside the authority of the legislature.

Under these circumstances the undersigned respectfully recommends that the several Acts be left to their operation.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## NOVA SCOTIA—50TH VICTORIA, 1887.

(1ST SESSION—29TH GENERAL ASSEMBLY.)

*Petition of Messrs. Belden Bros., re chap. 12.**To His Excellency the Governor General of the Dominion of Canada, in Council :*

The petition or memorial of the undersigned, Messrs. Belden Brothers, of Toronto, in the province of Ontario, respectfully sheweth :—

1st. Your memorialists are publishers in the said city of Toronto. Some years ago they published a book called " Picturesque Canada," which was largely sold all through the Dominion, a great many paying therefor when delivered, while some have resisted, and still are resisting payment.

2nd. Of the number resisting payment, some reside in the county of Cumberland, Nova Scotia. And in the month of March, 1886, it became necessary to take legal proceedings against a number of persons in order to collect our claims. These proceedings were commenced and taken in said county of Cumberland, where the defendants resided. Under the law in the province of Nova Scotia these parties applied for juries in each case, and the result was that the juries went directly contrary to the evidence given at the trials and against the charge of the learned judge of the county court, who tried said actions—in fact went even contrary to the admissions of the defendants themselves—and found for the people and against your memorialists, which necessitated an appeal to the Supreme Court of Nova Scotia, where the said appeals are still pending, and as the amount of our claim in each case is only \$21.60, great loss and serious injustice has been done us by the said decisions of the juries.

3rd. Having a large number of other delinquent subscribers residing in said county of Cumberland, it again became necessary for us in February of the year 1887, to again take legal proceedings, which we did in the county of Halifax, against these defendants residing in Cumberland. By the unfair treatment we had received in said county, we felt it would be worthless for us to expect to receive fair play or justice in said county of Cumberland, and were driven to Halifax to seek justice.

4th. Almost immediately upon our taking said proceedings to Halifax, persons acting on behalf of the defendants herein caused a bill to be introduced into the local legislature of Nova Scotia, compelling plaintiffs having claims against debtors for sums under \$80, to bring their action in the county where the defendant resided, thus driving the creditor to the debtor, instead of following the old and established law of compelling the debtor to come to his creditor, and the Act also went so far as to direct and compel judges of the county courts to send any case then before them back to the counties where the defendants resided, thus striking a blow at the very cases we have now standing in the county of Halifax for trial. In fact, since the said Act passed the legislature, which it did without any notice to us, a few weeks since, it has been admitted that it was aimed at and passed, for the sole purpose of striking a blow at the " Picturesque Canada " cases.

5th. Feeling that very great injustice will be done us if this law is allowed to come into operation and that we might just as well throw away our claims as to go to Cumberland county and fight them ; we humbly ask your Excellency and your honourable government to disallow said Act which is entitled : " An Act to amend the provisions of the Revised Statutes of County Courts and the procedure therein."

6th. We lastly say that our claims against the parties defendants in the several actions tried at Amherst were just and honest, and in every case the learned County Court Judge charged strongly in our favour, but notwithstanding that, and that the



evidence being with us—in one case where our witnesses as to the order for, and delivery of the work, not being contradicted, although the defendant was present but not called—the jury went so far as to refuse to give a verdict in our favour, and the only reason we ask that this law be not allowed, is that it is a direct blow at us personally and we could not get justice at the hands of a Cumberland jury, and it will be seen on reference to said Act, it applies to cases now outstanding as well as to any future cases.

On the grounds above set forth, your memorialists ask that said Act may be disallowed.

And as in duty bound your petitioners will ever pray, &c.

BELDEN BROS.

Dated at TORONTO this 30th day of May, 1887.

*Petition of Edward Church and others respecting Chapter 20.*

*To His Excellency Henry Charles Petty Keith Fitzmaurice, Marquis of Lansdowne, Governor General of Canada.*

*The humble Petition of the undersigned respectfully sheweth :*

1. That your memorialists are proprietors in a certain tract of dyked marsh land situate in Falmouth in the county of Hants, in the province of Nova Scotia, known as the "Falmouth Village Great Dyke," containing four hundred and forty acres or thereabout of 'ratable' land.

2. That chapter 40 of the Revised Statutes of the province of Nova Scotia, 4th series, intituled: "Of Commissioners of Sewers, and of Dyked and Marsh Lands," which came into force in the year 1873, contained general provisions with reference to dyked and marsh lands in the said province.

3. That chapter 42 of the Revised Statutes of the said province of Nova Scotia, 5th series, intituled: "Of Commissioners of Sewers and of Dyked and Marsh Lands," which came into force in the year 1884, contained provisions similar to those contained in chapter 40 of the Revised Statutes 4th series, except as varied by certain amendments and additions.

4. That your memorialists crave leave to refer to both chapter 40 and chapter 42 of the said respective series of the Revised Statutes of Nova Scotia before mentioned.

5. That on the 23rd day of June, 1881, a certain suit was instituted in the Supreme Court of Nova Scotia, by William Burnham, one of your memorialists, against one Nathaniel Davison, then, as now, of Falmouth aforesaid, to recover damages for certain trespasses alleged to have been committed by said Davison upon certain undyked marsh land lying on the outside of the running dyke, surrounding that portion of the tract mentioned in paragraph 1, which lay towards the tide-water.

6. That said suit was instituted against the said Nathaniel Davison, as a private individual.

7. That shortly after the institution of said suit a number of the proprietors in the said "Falmouth Village Great Dyke" fearing lest the said Nathaniel Davison (who was then and is now a commissioner of sewers for the township of Falmouth), would attempt to set up as a defence to said suit that he was acting in the legal performance of his duty as such commissioner, and believing the said Davison had no just defence to said suit, held a meeting, and protested against any such proceeding being adopted by said Davison, who was thereupon notified that the proprietors would not be responsible for any costs, charges or expenses incurred by him in setting up such a defence, and he was advised to settle said suit forthwith.

8. That on the 5th day of July, 1881, said Nathaniel Davison entered a defence to said suit, setting out in substance that the land upon which the alleged trespass was committed was not William Burnham's land, but was the land of him the said Davison.

9. That some months after entering the defence mentioned in the foregoing paragraph, said Nathaniel Davison by leave of the Supreme Court of Nova Scotia or a judge thereof, entered an additional defence claiming that he did the acts complained of as a com-

missioner of sewers for the township of Falmouth aforesaid, appointed under the provisions of chapter 40 of the Revised Statutes of Nova Scotia, 4th series.

10. That said suit was tried at Windsor in the county of Hants, in said province of Nova Scotia and on the 2nd day of June, 1882, a verdict was rendered in favour of said William Burnham, against the said Nathaniel Davison, for ten dollars damages and costs; a rule to set aside this verdict was then taken out by Davison, which rule after being twice argued before the Supreme Court at Halifax, in said province was, on the 22nd day of April, 1884, discharged with costs.

11. That against the decision referred to in the foregoing paragraph, said Nathaniel Davison, applied for and perfected an appeal to the Supreme Court of Canada; after full argument this appeal was in the month of February, 1885, dismissed with costs by the Supreme Court of Canada, and on the 26th day of March, 1885, final judgment was entered up for the said Burnham against the said Davison in the Supreme Court of Nova Scotia.

12. That as to the particular facts set forth in paragraphs 5, 6, 7, 8, 9, 10 and 11, your memorialists crave leave to refer to the proceedings in said suit now on file with the prothonotary of the Supreme Court at Windsor in the county of Hants and province of Nova Scotia, to the judgment of the Supreme Court of Canada, and we append hereto a copy of the printed case used on the argument of the appeal before the Supreme Court of Canada, together with the factum of William Burnham's counsel in said appeal; that your memorialists have been unable to obtain the printed report of the decision of the Supreme Court of Canada in said appeal, which we are advised has not yet been forwarded to the law library at Halifax, and we can only refer to a short note of said case which appears on page 515 of the Supreme Court of Canada Digest.

13. That after judgment has been entered against said Nathaniel Davison, as mentioned in paragraph 11 he was obliged to pay all the costs of said suit; the plaintiff's as well as his own, in addition to the sum of ten dollars damages, and we are given to understand that he claims to have paid in all the sum of \$1,350 or thereabouts in respect of said costs, and seeks to be reimbursed therefor as hereinafter mentioned.

14. That a certain bill was introduced into the legislature of the province of Nova Scotia at the last session thereof, intituled: "An Act to amend chapter 42, Revised Statutes, 'Of Commissioners of Sewers and of Dyked and Marsh Lands'"; said bill was debated in both branches of said legislature, and after passing the lower house was vigorously opposed in the upper chamber, and only escaped defeat therein by a majority of one vote, being the casting vote of the chairman, as we are informed. We append hereto a certified copy of said bill.

15. That your memorialists had no notice of the introduction of said bill into the said legislature until after its passage, otherwise steps would have been taken to prevent, if possible, the passage thereof and we are given to understand that had the facts which we set forth herein, been laid before said legislature, the said bill could not have escaped defeat therein.

16. That your memorialists are given to understand that the said Nathaniel Davison was largely influential in having said bill introduced into the legislature of Nova Scotia, and that he intends to avail himself of its provisions in order to reimburse himself for the costs, charges and expenses incurred by him in the aforementioned suit; that his case and that of another person in the county of Kings, in said province, gave rise to the introduction of said bill, and said bill is manifestly aimed at cases of the character and description hereinbefore detailed.

17. That although it is undoubted that said Nathaniel Davison, in the aforementioned suit, failed in establishing any right in himself to the land upon which the trespasses charged were committed, and also failed in establishing the fact that he was acting in the legal performance of his duty as commissioner of sewers, &c., in committing the Acts complained of, yet we submit that the ingenious and sweeping phraseology of



section 1 of said bill, which is the objectionable section, is probably sufficient to cover the case of the said Nathaniel Davison, and to authorize him (he still being a commissioner for the township of Falmouth) to assess your memorialists for the aforementioned costs, charges and expenses incurred by him, in which case your memorialists would become liable to a tax of \$3.00, or thereabouts, per acre, for every ratable acre of their dyked and marsh land in the "Falmouth Village Great Dyke" aforementioned, and possibly in a larger amount.

18. That said bill is *retrospective* and affects vested rights, and we humbly submit that the same is *ultra vires* of the legislature of the province of Nova Scotia.

19. That, should said bill receive the sanction of your Excellency, it would practically have the effect of reversing the decision of the Supreme Court of Canada in the aforementioned suit of Burnham *vs.* Davison, and your memorialists might become liable to be mulcted in a large sum of money, for the payment of which they might otherwise in no sense be responsible.

Your memorialists therefore humbly pray that your Excellency may take such measures for their relief that the said bill may be disallowed in whole or in part, as to your Excellency may seem most advisable and proper.

And your memorialists, as in duty bound, will ever pray, &c.

EDWARD CHURCH, and others.

*His Honour the Lieutenant-Governor of Nova Scotia to the Honourable the Secretary of State.*

GOVERNMENT HOUSE, HALIFAX, N.S., 17th September, 1887.

SIR,—Referring to Mr. Powell's despatch of the 12th August last, transmitting a petition from a Mr. Church and others of Falmouth, Nova Scotia, praying that an Act entitled "An Act to amend chapter 42 of the Revised Statutes," passed by the legislature of this province at its last session, might be disallowed, also to a despatch from Mr. Powell on the same date, relative to a petition from Messrs. Belden Bros., of Toronto, and likewise to my replies thereto of the 23rd ultimo; I have now the honour to inclose the reports of my Attorney General on the petitions mentioned above.

I have, &c.,

M. H. RICHEY,

*Lieutenant-Governor.*

*Report of the Honourable Attorney General of Nova Scotia on Memorial of Belden Brothers re Disallowance of Chapter 12, Acts of Nova Scotia, 1887.*

A copy of the memorial to his Excellency the Governor General on this matter, forwarded to his Honour the Lieutenant-Governor, has been referred to me. After a full and careful consideration of the subject, I beg leave to report as follows:—

*First.*—The Act in question was introduced by a private member of the House of Assembly, and the government of this province have no special interest whatsoever in it.

*Second.*—The objections which Messrs. Belden Brothers urge against the Act on the ground that it seems to have been intended to operate specially against their business and to the prejudice of their pending suits in court, would, in my view, be more appropriately addressed to the legislature of the province than to the source of disallowance. The statements contained in the memorial may for the purpose of this argument be assumed to be true. Nevertheless, I think it is perfectly clear that the Act itself is strictly within the competency of the provincial legislature, and it seems to me that it



would be both dangerous in principle and inconvenient in practice, to rectify the possible injustice of a provincial legislature, by disallowance. How far the Act itself may be in the public interests, how far private rights may be interfered with in any improper degree, are likely to be debatable questions; and it would be anomalous and might lead to endless confusion and difficulties, if the federal authorities undertook in matters admittedly within the area of the provincial legislature, to rectify all possible wrongs by the arbitrary exercise of the power of disallowance.

As to the Act itself it has been already said, no special importance is attached to it, and no obligation rests upon the government to defend its provisions. It is proper, however, to say there are features of it which are perfectly sound and correct. The first clause reads as follows:—

“All actions brought in the county courts for the recovery of debts under \$80, in which the plaintiff resides out of Nova Scotia, shall be brought and prosecuted in the county in which the defendant resides, or in which the debt or cause of action arose.”

If the clause had stopped here it would have been entirely justifiable and perfectly proper legislation; but the clause proceeds with this additional provision:—

“And in any such case now pending in the county court, either party shall be entitled to an order of the court or judge of the district in which the same is pending, changing the place of trial to the county in which the defendant resides, or the debt or cause of action arose.”

This clause may work with special harshness against the memorialists in the present suits, but I fail to see anything very radically unsound in such a provision, and if it did work harshly it would be entirely competent for the memorialists to go to the Nova Scotia legislature next session and point the injustice out, and it is altogether to be presumed that the legislature would be ready and willing to rectify any unintentional error it may have made. Besides if the statement made by Messrs. Belden Brothers be correct, as to their not being able to get a fair trial in Cumberland county, the Act in its second clause preserves to them a remedy always available. Clause 2 reads:—

“Nothing herein contained shall abridge in any way the power of the judge of the county court, having jurisdiction, making any order for a change of venue in such cases upon sufficient cause shown.”

I respectfully submit that the disallowance of this Act upon general principles would be an arbitrary exercise of the power, and would be subversive of the just and legitimate functions of the provincial legislature. But it must be understood that these remarks are made only upon general principles, and quite irrespective of any special features of the Act.

J. W. LONGLEY,  
*Attorney General.*

September 5th, 1887.

*Report of Attorney General of Nova Scotia on Memorial of Edward Church and others, re Disallowance of Chapter 20, Acts of Nova Scotia.*

The remarks made touching Messrs. Belden Brothers' memorial are, in the main, applicable to the present Act, which was introduced by a private member, and has no very wide application in the province. I will not say one word in regard to the specific objections to the application of the Act to the Falmouth dyke. I will assume that the statements contained in the memorial are in every way accurate. But I feel compelled to urge the point that those objections do not constitute a just and reasonable ground for the exercise of the powers of disallowance. The subject matter of the Act in question I hold to be entirely within the jurisdiction of legislature of Nova Scotia. If any clause of the Act contains any provisions which work unjustly towards any number of individuals in the province, the proper course in my view, would be to address these

objections, which are clearly and forcibly set out in the memorial before me to the provincial legislature at its next session. And there is no reason to doubt that this body would be ready to rectify any wrong unintentionally done.

I would lay it down as a just and sound principle that the disallowance of Acts clearly within the jurisdiction of a provincial legislature, should not be exercised unless the Act be grossly and inexcusably aimed at private parties, is exceedingly prejudicial in its character, and likely to work manifest and irreparable injury to the party or parties affected, before repeal was possible; and the legislature intended to persistently adhere to the gross, inexcusable and purposely prejudicial legislation. The Act now complained of would not fall, as it appears to me, within the above category or definition, in any respect, and I, therefore, solely on general principles, respectfully submit, that it is not fairly amenable to the legitimate exercise of the power of disallowance vested in his Excellency the Governor General.

J. W. LONGLEY,

*Attorney General.*

September 5th, 1887.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th April, 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has had under consideration the Acts of the legislature of the province of Nova Scotia passed in the session held in the year 1887 (50th Victoria) the chapters of which are mentioned in the schedule hereto, and recommends that they be left to their operation.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Schedule.*

Chapters 1 to 5, 7 to 11, 13 to 19, 21 to 50, 53 to 55, 57 to 91, 93, 97 to 101, 103 to 107 and 109 to 125.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th April, 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts of the legislature of the province of Nova Scotia passed in the year 1887, namely :

Chapters 6, 12, 20, 56, 92, 94, 95, 102 and 108.

Chapter 6.—An Act relating to the administration of Criminal Justice in the Supreme Court.

This Act has for its object the regulation of the choice of barristers who shall conduct criminal prosecutions in the province.

As the expense of conducting such prosecutions devolves upon the provincial authorities, there seems to be no objection to the Act being left to its operation. It contains, however, the following recital :—

“Whereas doubts have arisen and questions have been raised, under the British North America Act, as to whether the responsibility of paying the expense of criminal prosecutions was imposed upon the federal or provincial governments.”

The undersigned thinks it well to guard against it being inferred from the Act being left to its operation, that the doubts referred to in the preamble are in any degree shared by your Excellency's government.

Chapter 12.—An Act to amend chapter 105 of the Revised Statutes of the County Courts and Procedure therein.

The object of this legislation is to compel plaintiffs who reside outside of Nova Scotia, in prosecuting claims in county courts, to sue the defendants either in the county where he resides, or in the county in which the cause of action arose, and it further provided that in cases then pending, either party should be entitled to an order changing the place of trial to the county in which the defendant resided, or in which the cause of action arose.

In a petition to your Excellency from Messrs. Belden Brothers, of Toronto, it was in effect alleged that this legislation was aimed against them in their attempts to collect claims from divers parties residing in the county of Cumberland who had purchased a work from them known as "Picturesque Canada," and they earnestly protested against your Excellency allowing the Act in question to go into operation. Their petition, on being referred to the undersigned, was forwarded to the government of Nova Scotia for such observations as might be made in respect to it.

That government protested against the exercise of the power of disallowance in respect to the Act, urging that the legislation in question was in respect to a matter of purely local concern.

Although of opinion that legislation altering the status and rights of litigants in pending actions is, generally speaking, of a pernicious tendency, the undersigned does not think that there can be any doubt that the statute objected to is within the jurisdiction of the provincial legislature, and inasmuch as it does not affect the interests of the Dominion generally, and is not shown to have been likely to result in a defeat of justice in the cases said to be more immediately affected by it, the undersigned does not deem it advisable that your Excellency should exercise the power of disallowance in respect to it.

Chapter 20. An Act to amend chapter 42 of the Revised Statutes, "of Commissioners of Sewers and Dyked and Marsh Lands."

Section 1 of this Act is an amendment of sec. 7 of chap. 42, Revised Statutes of Nova Scotia, "of Commissioners of Sewers and Dyked and Marsh Lands," and it provided that it might be lawful to assess and collect from the owners or occupiers of dyked lands, all expenses, costs, charges and disbursements theretofore incurred, or hereafter to be incurred by the commissioners, in respect of any legal proceedings had or taken by, or against the said commissioners in the performance of their duties as such.

It appears that in the year 1881 one William Burnham brought an action of trespass in the Supreme Court of Nova Scotia against one Nathaniel Davison, "a commissioner of sewers for the township of Falmouth, in relation to the Falmouth Village Great Dyke." Mr. Davison set up as a defence in the action that the Acts complained of were performed by him as a commissioner of sewers under the provisions of chap. 40, above mentioned.

This action was tried and the verdict against Mr. Davison was eventually confirmed on appeal to the Supreme Court of Canada.\*

It is now alleged by a certain number of the proprietors of the Falmouth Village Great Dyke, that the legislation above cited was passed with a view of enabling Mr. Davison in his official capacity as commissioner, to compel the proprietors of the marsh in question—to refund him all his expenses in connection with that litigation.

Upon grounds similar to those stated in the remarks of the undersigned in reference to chapter 12, he does not deem it advisable that your Excellency should exercise the power of disallowance in respect of this chapter,

Chapter 51.—An Act to amend the Act to incorporate the town of Kentville.

\*See ante p. 568.



In the report of the undersigned to your predecessor of the 30th March, 1887, in relation to the legislation of the province of Nova Scotia for the year 1886, he had reason to call attention to certain objections to various acts passed by the legislature in that year in relation to the incorporation of certain towns. Such objections are equally applicable to certain provisions in this Act.

Your Excellency's attention is also directed to sections 253 and 257 of this Act, which purport to give to the stipendiary magistrate appointed by the town council, all the jurisdiction of two justices of the peace, and provides that all fines for the future, and fees collected or received in the stipendiary magistrate's court, or in the police office of the town, shall be paid into and form part of the general revenues of the town.

This provision is inconsistent with the provisions of chapter 180 of the Revised Statutes of Canada, sec. 2, which provides that, "whenever no other provision is made by any law of Canada for the application of any fine, penalty or forfeiture imposed for the violation of any such law, the same shall belong to the Crown for the public uses of Canada."

So far as section 257 might be held to be in contravention of the Dominion Statute, it is beyond the powers of the local legislature, but inasmuch as it may and undoubtedly should be construed to apply only to fines and forfeitures imposed by acts of the local legislature, or under lawful by-laws of the municipal council, the undersigned does not consider that these objections are sufficient to justify the disallowance of the Act as a whole. He recommends, however, that the attention of the provincial government be called to these provisions, in order that they may be amended so as to make it plain that they are not intended to interfere with the fines and penalties, which are at the disposal of the parliament of Canada.

The undersigned is of opinion that a provincial legislature cannot give to a town council power to make regulations for the discharging and depositions of ballast, rubbish or refuse in harbours or rivers. A portion of this statute (sec. 269, subsec. 20) would appear in this respect to be beyond the competency of a provincial legislature, and the undersigned recommends its repeal. The matter, however, is not of sufficient public importance, in the opinion of the undersigned, to call for the exercise of your Excellency's power of disallowance in respect of the Act, as such disallowance would probably occasion more public inconvenience.

The undersigned deems it right to call special attention to the provisions made in this Act for the organization of the municipal and police courts, and for the appointment of a stipendiary magistrate over such courts. There are doubts as to the power of a provincial legislature to legislate in respect to the appointment of justices of the peace or other magistrates.

There have been decisions in Canada, all entitled to great respect, supporting both views of the question, but no court of final review in the Dominion has as yet adjudicated upon it.

In the meantime it cannot be taken as settled that a provincial legislature or a Lieutenant-Governor has the power of making the appointments in question, or that the powers vested in your Excellency, under your commission, to appoint justices of the peace in her Majesty's name can be interfered with, abridged or taken away by provincial legislation.

Chapter 52.—An Act to consolidate with amendments, the Acts of Incorporation of the town of Windsor, and the Acts in amendment thereof.

This Act is open to the same objections as that in relation to the town of Kentville, sections 229 and 233, containing similar provisions in relation to Windsor in respect to the application of fines and forfeitures.

Section 239 is also objectionable, inasmuch as it purports to give the town council power to make regulations ;

(a.) In respect to docks and wharfs. (b.) The weighing and measurement of salt, coal, &c., and (c.) The discharging and depositing of ballast in harbours and rivers.

There is also a grave question as to the competency of the provincial legislature to give the municipality the power of making such regulations as to the suppression of vice, and as to the observance of Sunday, as are indicated in subsection 16 of section 239.

The undersigned, however, does not deem these objections of sufficient importance to call for your Excellency's exercise of your power of disallowance in regard to the Act, as such disallowance would probably occasion some public inconvenience, but he recommends that the attention of the Lieutenant-Governor of the province be called to the subject, in order that his Honour's advisers may recommend to the legislature the repeal or amendment of the objectionable provisions.

Chap. 56.—An Act to incorporate the Bolton, Parrsboro' and Londonderry Railway and Steam Navigation Company, Limited.

The title of this Act would seem to imply that the promoters intended that the business of the company should be done outside of the province of Nova Scotia, but inasmuch as that it is the only indication of an intention that this Act should have more than a provincial purpose, the undersigned does not recommend that the power of disallowance should be exercised in respect to it.

Chap. 92.—An Act to incorporate the Nova Scotia Gas and Electric Light, Fuel, and Power Company, Limited.

Sections 18, 19 and 20 of this Act are objectionable, inasmuch as they trench upon the criminal law.

Section 18 provides for the punishment of a person who steals gas or electricity. Sections 19 and 20 provide for the punishment of a person who wilfully or maliciously injures property.

All of such offences are punishable under the provisions of the criminal law of Canada.

The undersigned has received an assurance from the Attorney General of Nova Scotia that the government of that province will, at its next session, promote legislation to secure the repeal of these sections.

Chapter 94. An Act to incorporate the Amherst Electric Light and Water Company, Limited.

Section 15 of this chapter is subject to the same objections as those pointed out in respect to the last chapter referred to, and the same assurance has been given in regard to it.

Chapter 95. An Act to incorporate the Mountain Cemetery Company, Limited.

The provisions of sec. 18, providing for the punishment of any person who wilfully destroys any property in the cemetery is, in the opinion of the undersigned, an interference with the criminal law.

The legislature of Nova Scotia acted on the opinion which the undersigned had felt it his duty to express, that such legislation is beyond its authority, as by chap. 37 of the Acts of 1887, similar sections in Acts passed in the year 1886 were expressly repealed and expunged, by reason of their being *ultra vires* of that legislature.

Chapter 102. An Act to incorporate the New Glasgow Electric Company, Limited.

Chapter 108. An Act to incorporate the Truro Electric Company.

Section 19 of both of these Acts is subject to the same objections as the undersigned has made in respect to chapter 94 above referred to, and the same assurance has been given by the Attorney General of Nova Scotia in regard to these sections.

The undersigned therefore recommends that the several chapters which form the subject of this report be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*The Honourable the Minister of Justice to the Honourable Attorney General Longley.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th July, 1888.

MY DEAR SIR,—I wish to call your attention to the Acts of Nova Scotia, passed in the year 1887, which are set out in the annexed schedule, and to state that the sections therein specified are, it seems to me, *ultra vires* of a provincial legislature.

Inasmuch as the statutes in which these objectionable provisions are contained, are doubtless in the public interest, I do not think it desirable that the power of disallowance should be exercised in respect to them by reason of such provisions, if I am able to effect an arrangement with you, having in view the repeal of those provisions which are objectionable. This may be attained if you can assure me that at the next session of your legislature the government of Nova Scotia will promote legislation repealing the sections to which attention is particularly called. That assurance being given, his Excellency the Governor General will not be advised to exercise the power of disallowance.

I apprehend that you can have no difficulty in acceding to the proposition I have made, as it would in substance be the carrying out of the views expressed by you in your memorandum of the 17th August, 1887, upon my report on Nova Scotia legislation on the 30th March, 1887.

I am, &c.,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Schedule.*

Chap. 92, sec's. 18, 19 and 20.

Chap. 94, sec. 15.

Chap. 95, sec. 18.

Chap. 102, sec. 19.

Chap. 108, sec. 19.

Chap. 51, sec's. 253, 257, 269, subsec. 20.

Chap. 52, sec's. 229, 223 239, subsec's. 5, 6, 21.

*The Hon. Attorney General Longley to the Hon. the Minister of Justice.*

HALIFAX, 11th July, 1888.

MY DEAR SIR,—I received your communication of the 4th instant, respecting certain chapters of the local Acts of 1887, and have given the matter full consideration, and have to make the following statement in regard to the several clauses specified, first, chapter 51, sections 253, 257, 269, subsection 20 ; chapter 52, sections 229, 223, 239, subsections 5, 6, 21.

All these sections were revised last session by the introduction of a general Act of towns incorporation, and in that Act all these objectionable clauses were omitted.

Chapter 95, section 18. This clause was merely the result of oversight. I have passed an Act, as you are aware, eliminating that clause from all the cemetery bills, and will, of course, rectify this at the next session.

Chapter 92, sections 18, 19, 20 ; chapter 94, section 15 ; chapter 102, section 19 chapter 108, section 19. These clauses have given me some difficulty. I am inclined to agree with you that these clauses are not in the public interest. It is quite manifest that the criminal statutes of Canada are ample to meet such offences, but I am not absolutely clear that the legislature of Nova Scotia may not provide such penalties as these clauses contain, under the clause of the British North America Act, relating to property and civil rights.

However, without distinctly acknowledging that such clauses are *ultra vires* of the provincial legislature, I am disposed to say that the government will at the next session promote legislation to secure their repeal.

I have, &c.,

J. W. LONGLEY,  
*Attorney General.*



## NOVA SCOTIA—51ST VICTORIA, 1888.

(2ND SESSION—29TH GENERAL ASSEMBLY.)

*Petition of Trustees of School Lands in Cornwallis respecting Chapter 52.**To His Excellency the Governor General in Council, and the Honourable the Privy Council of the Dominion of Canada.**The humble petition of the undersigned sheweth,*

That your petitioners have learned that a bill having for its object the appointment of new trustees of the school lands in the township of Cornwallis, in the county of Kings, Nova Scotia, has been passed by the Governor, Council and Assembly in Halifax, the 16th day of April, 1888.

Your petitioners believe such an Act to be unconstitutional, and in the words of the Attorney General, Honourable J. W. Longley, whose short speech is inclosed, takes away the trust from the present holders thereof, who, with their predecessors, have held it for 98 years, and creates a new trust, making "a serious change in the management and ownership of property."

Your petitioners humbly beg for a disallowance of the said bill, among others, on the following grounds.

First. The lands in question, in common with all school lands in the province of Nova Scotia, were set apart on the understanding come to between the English government and the Church Society for the Propagation of the Gospel in Foreign Parts, as will be gathered from the inclosed certified copy of a letter from the clerk of the Lords Commissioners for Trade and Plantations, in 1749.

Secondly. That the lands thus promised were vested in trust in the Rector and Church Wardens of the parish of St. John, which is coterminous with the township of Cornwallis, in 1790, and in their successors in office, to our own trusteeship.

Thirdly. That Acts of like character have from time to time passed through the legislature of Nova Scotia, and have always been refused confirmation by the home government.

That in 1839 after the passing of such an Act, on the petition of the Lord Bishop of Nova Scotia, and the Society for the Propagation of the Gospel, to Her Majesty, the government of England caused a thorough examination into the claims of the church to be made, with the result that it was declared that the Society for Propagating the Gospel, which was the Church's representative, with whom the government had treated ninety years previously "have established an equitable claim to that portion of the lands which is already occupied and improved" \* \* \* "that the Society should be left to the entire and unreserved possession of it." The lands now interfered with were then in the position thus contemplated in Lord John Russel's despatch, a copy of which is also inclosed, with other certain extracts from the opinion of Counsel employed by the Crown, taken from the Journals of the House of Assembly of Nova Scotia, 1839-40.

Another bill was again disallowed in 1850, see despatch of Earl Grey to Lieutenant-Governor Sir John Harvey, Oct. 5th, 1850, (see page 162 Debates and Proceedings of the House of Assembly 1880).

Fourthly. That in 1880, when a similar bill was asked for, the then Attorney General (Hon. John S. D. Thompson) suggested it was more a matter for the courts, than that the House should be asked to interfere with "vested rights." The bill did not pass that session.

Your petitioners have since then been conducted through the Equity and Supreme Courts of Halifax, and the Supreme Court of Canada, when they were carrying out the terms of their trust deed, relying in good faith on the decision of the Privy Council in 1839; and

Now because the prayers of these persons have not been granted them by the courts, they have applied once more to the legislature to destroy our trust and create a new one.

Your petitioners therefore pray, your Excellency, and Honourable Council, not to assent to any such bill.

And your petitioners, as in duty bound, will ever pray.

Signed, by the trustees of the school lands in Cornwallis, this 12th day of July, 1888.

FREDRICK J. H. AXFORD, Rector of the Church of St. John.  
WM. SMITH, Church Warden.  
H. ZINK.

*Extract from the Journal of the Society for the Propagation of the Gospel in Foreign Parts.*

At a special meeting of the Society for the Propagation of the Gospel in Foreign Parts, by order of his Grace the Lord Archbishop of Canterbury, held on the 7th of April, 1749.

His Grace the Lord Archbishop of Canterbury in the chair.

A letter from Mr. John Pownall, solicitor and clerk of the reports, by order of the Lords Commissioners for Trade and Plantations, dated the 6th instant, was laid before the board and is as follows:—

WHITEHALL, April 6th, 1749.

SIR,—His Majesty having given directions that a number of persons should be sent to the province of Nova Scotia in North America, I am directed by my Lords Commissioners for Trade and Plantations to desire you will acquaint the Society for Propagating the Gospel in Foreign Parts that it is proposed to settle the said persons in six townships, and that a particular spot will be set apart in each of them for building a church, and 400 acres of land adjacent thereto granted in perpetuity free from the payment of any quit rent, to a minister and his successors, and 200 in like manner to a schoolmaster. Their Lordships therefore recommend to the society to name a minister and schoolmaster for each of the said townships, hoping that they will give such encouragement to them as the society shall think proper, until their lands can be so far cultivated as to afford a sufficient support. I am further to acquaint you that each clergyman who shall be sent with the persons who are to form this first settlement, will have a grant of 200 acres of land, and each schoolmaster 100 acres, in propriety to them and their heirs, as also 30 acres over and above their said respective quotas for every person of which their families shall consist, that they will likewise be subsisted during their passage and for 12 months after their arrival, and furnished with arms, ammunition and materials for husbandry, building their houses, &c., in like manner as the other settlers.

Their Lordships think proper that the society should be informed that (except the garrison of Annapolis) all the inhabitants of the said province amounting to 20,000 are French Roman Catholics, and that there are a great number of priests resident amongst them, who act under the directions of the French bishops of Quebec.

At the same time their lordships would recommend it to the consideration of the society whether it may not be advisable to choose some amongst others of the ministers and schoolmasters to be sent, who by speaking the French language may be particularly useful in cultivating a sense of the true Protestant religion among the said inhabitants, and educating their children in the principles thereof.

I am, &c.,

JOHN POWNALL,  
*Solicitor and Clerk of the Reports.*

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*Certified extracts from a despatch from Lord John Russell, taken from the Journals of the House of Assembly of Nova Scotia, 1839-40, app. No. 5, p. 27.*

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DOWNING STREET, 23rd September, 1839.

Sir,—Among other subjects—the Act passed by the Assembly during their last session, for the appointment of trustees of school lands—much time has necessarily been occupied in weighing the representations against the confirmation of that Act which have been submitted by the Bishop of Nova Scotia, and in obtaining the opinions of the law officers of the Crown on those points of law in which the question was involved.

Those representations and opinions have been fully considered. I am now enabled to communicate to you the views of Her Majesty's government upon this subject.

The real points which the government have had to determine have been the value and extent of the claims which have been preferred by the Bishop of Nova Scotia, on behalf of the Society for the Propagation of the Gospel, to the possession of these lands for the use of schoolmasters of the Established church. The decision of the Crown as to the confirmation or disallowance of the Act recently passed by the provincial legislature has necessarily been dependent, in a great degree, on the success or failure of that claim, and I shall proceed, therefore, in the first place, to explain to you the opinions which have been formed on these points by Her Majesty's government, after a most careful consideration of the whole subject.

Her Majesty's government are of opinion that the Society for the Propagation of the Gospel, although not possessed of a strictly legal right, have established an equitable claim to that portion of the land which is already occupied and improved, and they consider that the society should be left to the entire and unreserved possession of it, for the purpose to which it is at present dedicated, setting aside any other consideration, the society in connection with the Established Church of England and Ireland, have by the extent and efficiency of their arrangements for dispensing the benefits of education throughout the province, entitled themselves to the full enjoyment of the property.

You will have collected from what I have now stated, that it is not my intention to advise Her Majesty's government to assent to the Act passed in the last session of the provincial legislature entitled "An Act to provide for the Selection and Appointment of Trustees of Lands, granted or reserved or otherwise allotted as school lands, or for schools in this province." The legal opinions which have been taken on this Act confirms the doubt which was entertained by the government as to the competency of the local legislature to exercise this jurisdiction over the lands in question. The Act passed is open to the strong objection that it extends to all lands originally reserved or granted for purposes of schools, which must be plainly improper, so far as relates to lands vested in trustees appointed from time to time by the Governor. Even if the claim of the society had been altogether rejected, still the property not having been found with them, would revert to the Crown, and be disposable by the Crown, and not by the local legislature. But independently of what I have already stated, it appears to me that the Act is liable to this other grave objection, that it seeks by a direct exercise of power, to enforce a settlement of a question embodying many important points of proprietary rights and equitable consideration, which could be satisfactorily arranged, after a full examination of the ground on which the claims of the parties were founded.

I have, etc.,

J. RUSSELL.



*Extract from the dispatch from R. Vernon Smith to the Lord Bishop of Nova Scotia, App. 30, pp. 118-9.*

DOWNING STREET, 27th September, 1839.

MY LORD,—Lord John Russell having fully considered the whole question which has recently been under discussion, relating to the School Lands in Nova Scotia, and having duly weighed the several representations which your Lordship has submitted, in support of the claim advanced by the Society for the Propagation of the Gospel, to the possession of those lands for the use of schoolmasters of the Established Church, I am now directed to communicate to you his Lordship's decision on the subject.

Lord John Russell is of opinion that the society, although not possessed of a strictly legal right, have established an equitable claim to that portion of the lands which is already occupied and improved, and the society will therefore be left in the entire and unreserved possession of them, for the purposes to which they are at present dedicated.

I have etc.,

R. VERNON SMITH,

*Petition from the Bishop of Nova Scotia respecting Chapter 72.*

*To His Excellency the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, Governor General of Canada and Vice Admiral of the same.*

The petition of the Right Reverend the Lord Bishop of Nova Scotia, humbly sheweth :

That the Act, Chapter 72 of the Acts of the province of Nova Scotia, intituled : " An Act respecting School lands in the township of Cornwallis " passed the 16th of April, 1888, was wrongfully enacted and should be disallowed for the following reasons :

The grant of lands issued the 31st of December, 1790, referred to in this Act, was issued to the Reverend William Twining, the rector of the Church of St. John, and John Burbidge and Benjamin Belcher, wardens of that church, and the future rector and wardens of that church for the time, in special trust for the use of schools, etc.

For a period of 98 years, extending from that date up to the present month, the rector and wardens of that church, have during their respective terms of office held the land and administered the trusts of the grant, receiving such compensation therefor out of the lands as the law allows :

Although the legal title may have been technically defective, the rector and wardens were *de facto* trustees, and were on the one hand liable to the persons intended to be benefited, and on the other entitled to the administration of the trusts.

From an alteration in the circumstances of the schools of the country, the duties of the trustees were not at all clear, and hence arose litigation. The effect of the litigation, as your petitioner understands it, was to declare that a certain expenditure in constructing a school-house was not in accordance with the terms of the trust, and for this mistake the trustees were ordered to pay a large sum of money in costs, and upwards of three thousand dollars were expended in the costs of litigation. The rector and wardens defended the action in good faith, and upon the advice of eminent counsel. Indeed, the Supreme Court of Nova Scotia sustained them in their defence.

The Supreme Court of Canada reversed this decision, but held, as had been determined in the other courts, that the Equity Court undoubtedly could authorize a mode of disposing of the trust fund, so as to carry out as nearly as possible the intention of the grantor.

It is submitted that while this suit was pending, and while the trustees had the opportunity, under the directions contained in the judgment of Mr. Justice Strong, of applying to the Equity Court to authorize a mode of disposing of the trust funds and which it was not denied, but that the courts could do complete justice, it was a great

interference with vested rights for the parties promoting the action to approach the legislature.

This Act thus secured takes away from the rector and wardens the property and rights conferred upon them by the grant, and vests them in trustees to be appointed by an institution of the state.

The title of the rector and wardens may be technically defective, the value of the property small, and the remuneration connected with the trusts insignificant, but generally in English speaking countries, the legislature does not, as has been done in this case, deprive a citizen of his rights or his property without adequate compensation.

It is submitted also that it is perhaps the establishment of a dangerous precedent in these times to allow a municipal institution to seize upon the administration of trusts originally vested in, and administered by a religious institution.

If the legislature was induced to pass an Act of confiscation upon the understanding that some compensation should be made in the form of payment of the costs of the unfortunate rector and wardens, in connection with the litigation referred to, as is indicated in the last section of the Act, even this compensation has been withheld. The municipal council has, at its last meeting, refused to vote that the costs of the trustees should be paid out of the accumulated funds.

The trustees appointed by the municipal council have no connection with the parish of St. John, and the appointment, contrary to the doctrine of the equity courts, has been made entirely without reference to the original intention of the grantor. The rents are to be paid in to the county treasurer, to be expended upon the schools in the township of Cornwallis, in manner as by them shall be deemed most advisable, a trust so vague that nothing but an Act of the legislature could make it legal.

Your petitioner has been informed that a previous Act of the legislature of 1839, entitled, "An Act to provide for the selection and appointment of Trustees of lands granted or reserved, or otherwise allotted as school lands or for schools in this Province," was disallowed by Her Majesty in Council upon the ground stated in a despatch of Lord John Russell, bearing date 23rd September, 1839, in which it appears that the opinion of the law officers of the Crown was taken. That another Act of a similar nature passed in 1850 was disapproved of, as appears by the despatch of Earl Grey to the Governor of this province, Sir John Harvey, dated 5th October, 1850. And your petitioner submits that the objections set forth in these despatches are applicable to the present Act.

Your petitioner therefore humbly prays that the Act of the legislature of the province of Nova Scotia, passed on the 16th day of April, 1888, chapter 72, may be disallowed; and as in duty bound will ever pray.

F. NOVA SCOTIA.

HALIFAX, 24th January, 1889.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 30th January, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th January, 1889.

*To His Excellency the Governor General in Council:*

The undersigned having had under consideration the following Acts of the legislature of the province of Nova Scotia passed in the session held in the year 1888, the chapters of which Acts are mentioned in the schedule hereto, respectfully recommends that they be left to their operation.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Schedule.*

Chapters 4 to 8, 10, 12 to 15, 17 to 29, 31 to 36, 38, 39, 41, 42, 44 to 71, 73 to 81, 83 to 127, 129 to 136, 138 to 144, 146 to 151.



*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 6th February, 1889.*

DEPARTMENT OF JUSTICE OTTAWA, 28th January, 1889.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration his report on the following Acts passed by the legislature of the province of Nova Scotia, in the session of 1888, authentic copies of which were received by the Secretary of State on the 29th August last.

Chap. 1. The Towns Incorporation Act.

This Act repeals all of the charters of incorporation to the various towns in Nova Scotia, bringing the towns under the operation of this general Act. It eliminates several objectionable features which existed in various Acts of incorporation and which have been commented on from time to time by the undersigned, and by his predecessors in office.

The undersigned must, however, call attention to section 269 of this Act which purports to give a town council power to make by-laws on the following, among other, subjects :

"(5.) The weighing and measurement of salt, coal and wood, lumber, shingles, logs, timber, hay, straw and grain, and fixing the rates thereof."

"(15.) The prevention and punishment of vice, drunkenness, immorality and indecency in the public streets, highways and other public places, and prevention of the profanation of Sunday."

These matters are within the control of the parliament of Canada, and have been legislated on by that parliament, and it can only be competent for a provincial legislature to enact laws in respect of them for the purpose of aiding the enforcement of the laws of Canada. In any other view it would be difficult to assent to the constitutional character of the provisions mentioned.

Subsection (15) of sec. 269, which relates to the licensing of auctioneers, pedlars, and hawkers of goods and traders who are not ratepayers within the town, is a provision of doubtful validity ; but as this question can be raised in due course by those concerned, there seems to be no necessity for any action by your Excellency with regard to it.

The undersigned wishes to call attention to the provisions made in this Act in relation to the municipal court and to the powers of the stipendiary magistrate. So long as the statute provides that the justice presiding over the court is to be appointed by the Governor General in Council, under the provisions of the British North America Act, there may be no objection to increasing the jurisdiction of such court.

But there are serious objections as in the present case, to the provincial legislature giving to the municipal court, the presiding officer of which is appointed by the provincial authorities, such large jurisdiction as is in this Act provided for, section 187 it would seem, gives the municipal court unlimited jurisdiction in the matter of taxes, and the subsequent sections give additional powers.

Section 252 of the Act, it would seem, infringes upon the common law, the phrase "criminal offenders" therein being wide enough to cover persons offending against the criminal law of the Dominion ; and the same objection applies to section 255.

The undersigned, however, recommends that the whole Act be left to its operation.

Chap. 2. An Act to amend and consolidate the Acts relating to Municipal Assessments.

The British North America Act limits the powers of taxation vested in a provincial legislature to the imposition of direct taxes.

The result of some of the provisions of this Act may be of the nature of indirect taxation. Any objection on that ground can, however, be easily raised by those whose property may be affected by it, and can, without inconvenience or detriment, be left to the decision of the courts.



Chap. 3. An Act to provide a Tribunal of Arbitration in certain cases.

This Act forms the subject of a separate report to your Excellency.

Chapter 9. An Act in relation to the Public Health.

Section 2 (subsec. 4) of this Act provides that "the Governor in Council may by his sanitary orders, provide for regulating, so far as this legislature has jurisdiction in this behalf, with a view of preventing the spread of infectious disease, the entry or departure of boats or vessels at the different ports or places in Nova Scotia, and the landing of passengers or cargoes from such boats or vessels or from railway carriages or cars, and the receiving passengers or cargoes on board the same."

The British North America Act gives exclusive legislative power to the Parliament of Canada in respect of quarantine, navigation and shipping. It would clearly not be competent for a provincial legislature to make an enactment relating to the arrival of vessels, vehicles, passengers or cargoes from places outside the province; but it may be that provincial control may be exercised in relation to transport from one port of the province to another, subject of course to any regulation on the subject of quarantine by the federal authority. The Act appears to be one of considerable utility, and inasmuch as suitable quarantine regulations have already been established for the prevention and spread of infectious disease throughout Canada, the undersigned recommends that this Act be left to its operation.

Chapter 11. An Act to consolidate and amend the enactments relating to Trustees, and for other purposes.

Section 8 provides in effect that no property vested in any person upon any trust shall be forfeited to her Majesty by reason of the attainder or conviction of such trustee, but shall remain in him as if no such attainder or conviction took place.

This section which is taken from the English Act on the subject clearly relates to the criminal law, and is not therefore a proper subject of legislation for a provincial legislature.

The undersigned has to recommend that the attention of the Lieutenant-Governor of Nova Scotia be called to this provision with a view to its repeal at the next meeting of the legislature, and that his Honour be asked whether such repeal will be recommended by his advisers, as it will be the duty of the undersigned to recommend disallowance of the Act if that assurance be not given.

Chapter 16. An Act to amend chapter 56 of the Revised Statutes, "Of County Incorporations," and an Act in amendment thereof.

This Act proposes to give to municipal councils the power to make by-laws in respect to the licensing of auctioneers who are not ratepayers within the county and licensing of pedlars, hawkers of goods and traders, who are not ratepayers within the province.

The undersigned, in recommending that this Act be left to its operation, nevertheless thinks it to be his duty to suggest that it is of doubtful validity, in view of the exclusive right of the parliament of Canada, to regulate trade and commerce. The observation which has been made in this report on subsection 15, of section 269, of chapter 1, is applicable to this provision,

Chapter 30: "An Act relating to Bills of Lading."

This Act seems to entrench upon the jurisdiction of the parliament of Canada to legislate in respect to trade and commerce. It recites that "by the custom of merchants a bill of lading of goods, being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property." The Act then proceeds to provide what the effect of the endorsement of a bill of lading shall be as regards the right under the contract contained in such bill of lading. The policy of the Act is unquestionably sound. It would seem well that such a change should be embodied in an Act of the parliament of Canada and although the competency of the provincial legislature in this regard is doubtful, the undersigned does not therefore recommend the exercise of the power of disallowance.

Chapter 37 : "An Act to amend chapter 106, Revised Statutes, 'Of Juries.'" The enactments respecting grand and petit jurors may, to some extent, affect "procedure in criminal cases," but as such enactments have not been excepted to heretofore, the undersigned does not feel called on to comment on this Act in any special manner.

Chapter 40 : "An Act respecting the Liquor License Act, 1886."

The undersigned had the honour to report to your Excellency's predecessor on the 15th day of September, 1887, upon the constitutionality of certain provisions contained in the statute of which this Act is an amendment, in respect to wholesale licenses and licenses to brewers and distillers. This Act has been passed for the purpose of obtaining a judicial decision from the Supreme Court of Nova Scotia as to the constitutionality of those provisions in the original Act.

Section 1 of the Act provides that "The Governor in Council may refer to the Supreme Court of Nova Scotia for hearing and determination, the questions as to the competence of the legislature to pass" the clauses referred to, and that such court shall hear and determine and certify their judgment to the Governor in Council.

Section 2 provides that "The judgment of the said court shall be final, unless at the request of the Governor in Council Her Majesty may be pleased to refer the question to the Judicial Committee of the Privy Council."

The Supreme Court of Nova Scotia has already decided (the undersigned has been informed) that this Act is *ultra vires* of a provincial legislature, and on that ground has refused to hear the question which was referred by the Lieutenant-Governor in Council.

Under these circumstances the undersigned suggests that the power of disallowance need not be exercised in respect thereto.

Chapter 43. "An Act to legalize the jury panels and assessment rolls for 1888," is subject to the same observations as those which have been made in this report on chapter 37.

Section 31 of chapter 82. "An Act to incorporate the Annapolis and Atlantic Railway Company, Limited."

Section 14 of chapter 137. "An Act to incorporate the Halifax Vinegar and Pickling Company, Limited."

Section 18 of chapter 145. "An Act to incorporate the Malaga Mining Company, Limited."

Section 20 of chapter 151. "An Act to incorporate the Nova Scotia Stone Company, Limited."

All these provisions are, it is submitted, infringements upon the exclusive legislative authority of the Dominion parliament to legislate in respect to bills of exchange and promissory notes.

So likewise section 32 of chapter 82, already mentioned, infringes upon the exclusive powers of the parliament of Canada to legislate in respect to aliens.

The undersigned does not deem these provisions to be of such vital importance as to compel a disallowance of the Acts, and he therefore recommends that the same be left to their operation.

Chapter 128. "An Act to amend chapter 100 of the Acts of 1887, intituled, 'An Act to incorporate the Nova Scotia Telephone Company, Limited.'"

The British North America Act limits the powers of provincial legislatures in respect to the incorporation of companies to such as are purely provincial in their objects, so that a provincial legislature cannot authorize a company to do business beyond the limits of the province; nor can it ratify an agreement made between two companies which provides for the carrying on of business by one or the other of them in another province. This Act violates this principle, and is therefore in the opinion of the undersigned beyond the competency of a provincial legislature; but inasmuch as the Act is purely private in its nature, passed at the instance of the parties to the contract, and involves no public interest, so far as can be seen, the undersigned does not recommend that the power of disallowance should be exercised in regard to it.

Chapter 72. "An Act respecting School Lands in the township of Cornwallis."

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The rector and church wardens of Saint John's parish, in Cornwallis, Nova Scotia have addressed a petition to your Excellency, praying that this Act be disallowed, upon the grounds substantially that it is an interference with vested rights and makes a decided change in the management and ownership of property. The undersigned, without expressing any opinion as to the policy of the Act, but bearing in mind that the petitioners were at best only trustees of the lands therein referred to, and nothing more, begs to call to the attention of your Excellency to the fact that, in innumerable instances, legislatures have taken upon themselves the power of legislating away the particular rights of trustees, having regard to the high and more important interests of the beneficiaries.

This Act, so far as the undersigned can judge, is legislation of that character alone, and inasmuch as it is a matter peculiarly within the powers of the provincial legislature, the undersigned respectfully recommends that it be left to its operation.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Nova Scotia for the consideration of his Honour's advisers.

JNO. S. D. THOMPSON,

*Minister of Justice.*



## NOVA SCOTIA—52ND VICTORIA, 1889.

(3RD SESSION, 29TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th June, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1890.

*To His Excellency the Governor General in Council :—*

The undersigned respectfully recommends that the following Acts passed by the legislature of the province of Nova Scotia in the session of 1890, the chapters of which are given in the annexed schedule, be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON.

*Minister of Justice.*

## SCHEDULE.

Chapters 1 to 8, 10, 12 to 56, 58 to 113, 115 to 118, 120 to 125, 127 to 142, 145, 146, 149, 152 to 156, 158 to 188.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th July, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1890.

*To His Excellency the Governor General in Council :—*

The undersigned has the honour to submit for consideration his report on the following Acts passed by the legislature of the province of Nova Scotia in the session of 1889.

Chap. 9. An Act to amend and consolidate the Acts relating to the County Courts.

Section 5 of this Act is as follows :—

“There shall continue to be one judge for each district, who shall reside within the district for which he is appointed, and shall hold office during good behaviour.”

“Every such judge shall be a barrister of the Supreme Court of the province, of not less than seven years standing, &c.

Attention has frequently been called to attempts on the part of provincial legislatures to limit the power to appoint judges vested in your Excellency under the provisions of “The British North America Act,” and this legislation is subject to that objection.

The provision is, however, not new or important, and in no sense will be binding on your Excellency or your successors in office. The Act may, therefore, be left to its operation.

Chap. 2. An Act respecting the County Judges’ Criminal Courts.

This Act was passed for the purpose of enabling the province of Nova Scotia to take advantage of the provisions of chapter 47 of 52nd Vic. (Canada) intituled: “An

Act to make further provision respecting the Speedy Trial of Indictable Offences" whereby "The Speedy Trials Act" then in force was extended to the province of New Brunswick, Nova Scotia and Prince Edward Island.

The undersigned has reason to believe that the extension of the system of speedy trials has been of great service in reducing the cost of the administration of criminal justice in Nova Scotia, and in making it more prompt than it had ever been before.

Cap. 57. An Act to amend chapter 159 Revised Statutes of Nova Scotia, third series, entitled: "Of offences against religion."

A question has arisen as to whether the statute which this Act purports to amend, is within the competency of a provincial legislature.

This Act professes to regulate the penalties for the violation of the provisions existing in Nova Scotia before confederation, on the subject of the observance of Sunday. The doubts which may be entertained as to the constitutionality of the enactment may be left, without inconvenience, to be decided by the courts, and the undersigned therefore recommends that the Act be left to its operation.

Cap. 114. "An Act to further amend the Act to incorporate the Nova Scotia Telephone Company, limited.

The object of this Act is to ratify and confirm an agreement entered into between the Nova Scotia Telephone Company, limited, as a company, incorporated by provincial charter, and the Bell Telephone Company of Canada, a company incorporated by a Dominion charter. The result of the agreement is practically to confer upon the latter company, enlarged powers and franchises, and may be therefore in effect an attempt to amend the provisions of the Dominion Act of incorporation.

The undersigned is of opinion that this is beyond the powers of a provincial legislature, but as the Act in question is one dealing with private rights, the questions involved may be conveniently settled by the courts should litigation arise, and the undersigned therefore recommends that it be left to its operation.

Cap. 119. An Act to amend chapter 131 of the Acts of 1888, intituled: "An Act to incorporate the New York and Nova Scotia Iron and Railway Company," limited.

Cap. 126. An Act to incorporate the "Amherst Street Railway Company," limited.

Cap. 143. An Act to incorporate the "Lake View Mining Company," limited.

Cap. 144. An Act to incorporate the "Dawes Gold Mining Company," limited.

Cap. 147. An Act to incorporate the "American Steam Compressed Fish Company," limited.

Cap. 148. An Act to incorporate the "Eureka Manufacturing Company," limited."

Cap. 150. An Act to incorporate the "Dufferin Gold Mining Company," limited.

Cap. 151. An Act to incorporate the "Cape Breton Fish and Trading Company," limited.

Cap. 157. An Act to incorporate the Nova Scotia Condensed Milk and Canning Company," limited.

Section 3, of chap. 119, contains a provision in reference to the rights and capacity of aliens, which has been frequently objected to by the undersigned in Acts of incorporation.

Section 5, of chap. 126; sec. 16, of chap. 143; sec. 17, of chap. 144; sec. 13, of chap. 147; sec. 6, of chap. 148; sec. 9, of chap. 150; sec. 20, of chap. 151; sec. 14, of chap. 157, are provisions purporting to confer on the companies to which these Acts relate, powers to make bills of exchange and promissory notes, a matter in respect to which, as has been frequently pointed out, the parliament of Canada alone has legislative jurisdiction.

In view, however, of the provisions of this subject in the Canadian Statute of 1890 in relation to bills of exchange and promissory notes, the undersigned recommends that they be left to their operation.

Respectfully submitted,

JNO. S. D THOMPSON,

*Minister of Justice.*

## NOVA SCOTIA—53RD VICTORIA, 1890.

(4TH SESSION—29TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 21st April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd April, 1891.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon two Acts of the legislature of the province of Nova Scotia, passed during the session of 1890, and received by the Secretary of State on the 25th of April last, as follows :—

“An Act to amend chap. 60 of the Acts of 1865, intituled : ‘An Act to incorporate the Foreign Missionary Board of the Baptist Convention of Nova Scotia, New Brunswick, and Prince Edward Island.’”

This Act deals with a corporation created in 1865, by the legislature of Nova Scotia, for the purpose of taking and holding property to be used for missionary corporations in connection with the Baptist Convention of Nova Scotia, New Brunswick and Prince Edward Island. The original corporation was not provincial in its object, nor private nor local in its character. Upon the passing of the British North America Act, it therefore ceased to be within the legislative authority of the province. In the case of *Dobie vs. The Board*, for the management of the temporalities fund of the Presbyterian Church of Canada, in connection with the Church of Scotland (7 Appeal Cases, 136), the Judicial Committee of the Privy Council held that an Act of the province of Quebec, similar in its aim to the Act now under review, and dealing with a corporation created before the union by the legislature of the province of Canada, was *ultra vires* of a provincial legislature.

The undersigned is, therefore, of the opinion that this Act is invalid. Its constitutionality, however, may be determined, as other Acts similar in aim have been, by appeal to courts of law, and there does not, in the view of the undersigned, appear to be any public necessity for its disallowance. He therefore recommends that the same be left to its operation.

Chapter 122. “An Act to amend chapter 84 of the Acts of 1879, entitled ‘An Act to incorporate the Home Mission Board of the Baptist Convention of Nova Scotia, New Brunswick and Prince Edward Island.’”

This Act may be open to the same objection as chapter 121 above reported on.

The undersigned, however, recommends, for the same reasons, that it be left to its operation.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

NOTE.—No general report upon the Nova Scotia Acts of 1890, appears to have been made.



## NOVA SCOTIA—54TH VICTORIA, 1891.

(1ST SESSION—30TH GENERAL ASSEMBLY.)

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 6th June, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd June, 1891.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon an Act passed at the last session (54th Victoria, 1881) of the legislature of the province of Nova Scotia, chapter 4, intituled "An Act respecting a Provincial Loan."

Accompanying this certified copy of the Act in question is a despatch from his Honour the Lieutenant-Governor of the province containing the following request.

"As it is proposed to take immediate action under this Act, I would request that I may be favoured with the signification of his Excellency the Governor General's pleasure regarding it at as early a day as possible."

The undersigned has the honour to recommend that the Act in question be left to its operation, and that a copy of this report, if approved, be forwarded to his Honour the Lieutenant-Governor.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 9th August, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th May, 1892.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to state that he has examined all the statutes passed in the year 1891, by the legislature of the province of Nova Scotia and assented to on the 19th day of May, 1891, containing one hundred and ninety-six chapters, and he has the honour to recommend that the same be left to their operation.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## NOVA SCOTIA—55TH VICTORIA, 1892.

(2ND SESSION, 30th GENERAL ASSEMBLY.)

*His Honour the Lieutenant-Governor of Nova Scotia to the Honourable the Secretary of State.*

GOVERNMENT HOUSE, HALIFAX, N.S., 5th August, 1892.

Sir,—Referring to my despatch No. 45, dated the 2nd inst., I have the honour to inclose for your information a copy of a petition of certain lessees of coal mines in this province addressed to me against the passage of the Act (chap. 1) relating to mines and minerals and the Act respecting the royalties on coal, together with a copy of my reply thereto.

I have, etc.,

M. B. DALY,  
*Lieutenant-Governor.*

*Petition from Lessees of Coal Mines in Nova Scotia to His Honour the Lieutenant-Governor.**To the Honourable Malachy Bowes Daly, Lieutenant-Governor of Province of Nova Scotia :—*

The petition of the undersigned lessees of coal mines in the province of Nova Scotia humbly sheweth, that there has passed the House of Assembly and the legislative council during the present session of the legislature of the province of Nova Scotia, an Act intituled “An Act to amend and consolidate the Acts relating to mines and minerals.

The 116th, 117th and 122nd sections of the said Act are respectively as follows :—

116. All ores and minerals (other than gold or silver) mined, wrought or gotten under authority of licenses or leases granted under the provisions of said chapter 7 of the Revised Statutes, fifth series, or of any Act heretofore passed by the legislature of this province, shall be subject to the following royalties to the crown for the use of the province, that is to say :—

117. Coal—Ten cents on every ton of two thousand two hundred and forty pounds of coal sold or removed from the mine, or used in the manufacture of coke or other form of manufactured fuel.

122. All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished, or otherwise changed by the legislature.

There has also passed the House of Assembly and the legislative council during the said present session an Act intituled : “An Act respecting the royalties on coal.”

The first section of the last mentioned Act is as follows :—

1. The royalty of ten cents per ton on coal as fixed by the said section shall be held to have taken effect on the 23rd day of February, 1892.

The present rate of royalty on coal is seven and one-half cents per ton on all coal including so called slack coal, or in some cases nine and seven tenths on round coal, such rates being optional on the part of the lessees and mutually regarded and treated as equivalent.

The first mentioned proposed Act provides in the said 116th section for an increase in the royalty to be paid by your petitioners, and all corporations or persons operating coal mines under existing leases, amounting to  $33\frac{1}{3}$  per cent.

The other proposed Act provides for the increased royalty being exacted retroactively, and it is submitted is therefore specially objectionable independently of the grounds of objection to the main Act.

The previous legislation bearing on the said proposed Acts is as follows :—

Section 1, chapter 9 of the Acts of 1866 is as follows :—

1. Lessees of coal mines in this province, their executors, administrators and assigns, holding leases from the Crown, or from the Chief Commissioner of Mines, made since the first day of January, A.D., 1858, or hereafter to be made, shall, upon giving notice in writing to the Chief Commissioner of Mines, at least six months previous to the expiration of such leases, respectively, of their intention to renew such leases respectively for a further period of twenty years, from the expiration thereof, be entitled to a renewal thereof for such extended term, upon the same terms, conditions and covenants as contained in the original lease, and in like manner upon giving a like notice before the expiration of such renewed term to a second renewal and extension of term of twenty years from and after the expiration of such renewal term, and in like manner upon giving like notice before the expiration of such second renewal term to a third renewal and extension of twenty years from and after the expiration of such second renewed term ; provided that at the time of giving such notices, and the expiration of such terms, respectively, the said lessees, their executors, administrators and assigns, are and shall continue to be, *bonâ fide* working the areas comprised within their respective leases, and complying with the terms, covenants, and stipulations in their respective leases contained, within the true intent and meaning of section 104 of the Act hereby amended, and provided that in no case shall such renewal or renewals extend, or be construed to extend, to a period beyond 60 years from the 25th day of August, A.D., 1856, and provided also that the legislature shall be at liberty to revise and alter the royalty imposed under such lease in or after the year 1886.

Section 102, chapter 9 of the Revised Statutes, fourth series (1873), is identical with the above section of the Act of 1866, except that it does not contain the concluding proviso, that is to say the words : “ And provided also that the legislature shall be at liberty to revise and alter the royalty imposed under such lease, in or after the year 1866.”

No such provision as this latter is contained in any part of the consolidated Acts of 1873.

Section 105 of chapter 7 of the Revised Statutes, fifth series, is as follows :—

105. The General Mining Association, “ Limited,” and other lessees of mines other than gold, or gold and silver mines in this province, their executors, administrators and assigns shall, upon giving notice in writing to the Commissioner of Mines at least six months previous to the expiration of their leases, respectively, of their intention to renew such leases, respectively, for a further period of twenty years from the expiration thereof, be entitled to a renewal thereof for such extended term upon the same terms, conditions and covenants as contained in the original lease, or as prescribed by this chapter or by any Act that may be passed by the legislature of this province, and in like manner upon giving a like notice before the expiration of such renewal and extension of term of twenty years from and after the expiration of such renewal term, and in like manner upon giving like notice before the expiration of such second renewal term, to a third renewal, and extension of twenty years from and after the expiration of such second renewed term, provided that at the time of giving such notices and the expiration of such term, respectively, the said lessees, their executors, administrators and assigns, are and shall continue to be, *bonâ fide*, working the areas comprised within their respective leases, and complying with the terms, covenants and stipulations in their respective leases contained, within the true intent and meaning of section 107 of this chapter, and provided that in no case shall such renewal or renewals extend or be construed to ex-



tend to a period beyond eighty years from the date of the original lease, but the renewed lease shall not include in respect of each mine worked, a larger area than five square miles.

(e.) In the case of leases that are eligible for renewal in which the conditions of renewal embodied therein are different from those prescribed by this chapter, and the lessees thereof are unwilling to have such conditions altered, the Commissioner shall have the power to renew said leases on the terms contained therein, and as prescribed by chapter 9, Revised Statutes, fourth series, and no other.

Section 4 of chapter 4 of the Acts of 1885, is as follows :—

4. All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished, or otherwise changed, by the legislature.

All leases in existence previous to the 25th day of August, 1886, expired on that date, and were with leases afterwards issued from time to time renewable according to the terms of the Act above set out, and the terms of the leases themselves, on the corresponding dates in the years 1906, 1926, and 1946.

Your petitioners submit that the re-enactment in 1873 of section 1 of the Act of 1866, without the proviso under which the legislature was to “be at liberty to revise and alter the royalty in or after the year 1886,” conferred upon all the holders of then existing coal leases, and upon all subsequent holders of coal leases, up to the year 1884, when the Revised Statutes, fifth series, were promulgated, and absolute legal right to renewals of their leases up to the year 1946 without any increase in rent or royalty.

As to section 105 of chapter 7 of the Revised Statutes, fifth series, above set out, your petitioners are advised and they submit that, in construing the portion of this section which provides that lessees “shall be entitled to a renewal upon the same terms, conditions, and covenants, as are contained in the original lease, or as prescribed by this chapter, or by any Act that may be passed by the legislature of this province,” it must be assumed either that it was not the intention of the legislature to provide for future legislative action in the shape of a measure purporting to legalize the imposition of an increased rent, in violation of a lease defining what that rent should be, or, on the other hand, if the language used as to the terms of renewal be considered broad enough to cover the matter of an increase in rent, then it is submitted that the Act itself was improper, and that the present Act which proposes to legalize a specific increase of royalty in violation of existing contract rights, should not receive your Honour’s assent.

Further, as to this last mentioned section, your petitioners submit that even upon its proper construction, it would include a right on the part of the legislature to increase the royalty payable under then existing leases, such increase could be stipulated for only at the time of the renewal in the year 1886 of the leases respectively, all of which were to expire, and did expire, in that year, so that the renewal being once made, the royalty could not be legally increased until the next following renewal date.

As to section 9 of chapter 4 of the Acts of 1885 above set out, your petitioners are advised and they submit, that upon its true construction, it relates only to leases to be issued subsequently to its passing, and that it does not relate to agreements merely expressing the rights of the parties by virtue of leases previously issued.

Your petitioners submit that there is clearly no legal ground for giving to the language here used an *ex post facto* operation, seeing that there is ample office for the words to perform, in connection with original leases to be issued after the passing of the Act.

For the reasons above indicated, your petitioners submit that the proposed legislation in a most substantial and serious manner invades the vested rights of your petitioners, secured to them by contracts solemnly entered into on the faith of which they have invested very large sums as capital in the various coal mining districts of the province.

By far the greater portion of such capital has been invested by persons residing outside of this province, and they as well as others residing in Nova Scotia would

direct your attention to the breach of their contract rights which the proposed Acts involve as above set forth and your petitioners therefore pray your Honour to withhold your consent to the said Acts.

And your petitioners as in duty bound will ever pray, etc., etc.

The Mining Society of Nova Scotia,  
HENRY S. POOLE, *President*.  
The General Mining Association, Limited,  
CUNARD & MORROW, *Agents*.  
The Acadia Coal Company, Limited,  
HENRY S. POOLE, *Agent*.  
The International Coal Company, Limited,  
By HUGH McD. HENRY, *their attorney*.  
The Cumberland Railway and Coal Company, Limited,  
By HECTOR McINNES, *their attorney*,  
The Caledonia Coal and Railway Co.,  
Per H. S. POOLE.  
The Gowrie Coal Mining Co., Limited,  
By HUGH McD. HENRY, *their attorney*.  
J: R. Cowans,  
By HECTOR McINNES, *his solicitor*.  
Glace Bay Mining Co., Limited,  
J. R. LITHGOW, *Treasurer and Manager*.  
International Coal Mining Co.,  
HENRY A. BUDDEN, *Vice President*.  
Lingan Low Point and Barachois Coal Company, Limited,  
W. J. STAIRS, *President*.

*Hon. Attorney General Longley to the Hon. the Minister of Justice.*

HALIFAX, 28th September, 1892.

DEAR SIR,—I have carefully considered the memorial signed by Henry S. Poole and others, which your deputy has under your directions forwarded to me, with an intimation that you would be pleased to have any observations I might see fit to make in reference thereto.

In the first place, it is hardly necessary that I should point out that the management of the mines under the British North America Act is vested exclusively in the provincial legislatures, and that therefore they have the sole and exclusive right to legislate in reference thereto, so long as that legislation does not trench in any way upon the laws which the Parliament of Canada is competent to make. As the Act complained of in this instance is an Act relating solely to the management and control of the mineral interests of Nova Scotia, and is simply a compilation of the Acts already upon the Statute-book with a few amendments, I certainly am unable to comprehend any reason why a serious proposal should be made to his Excellency the Governor General, to interfere with its operation.

Second, the particular clauses to which objection is made are those relating to the royalties upon coal. It will be scarcely necessary for me to remind you that the royalties upon coal in Nova Scotia constitute the largest source of provincial revenue outside of the federal allowance, and therefore any interference on the part of the federal authorities with the prerogative to obtain revenue from this source would be such a direct and vital interference with the rights of the province, as to make government practically impossible. The whole financial policy of a province might be based upon the admini-



stration of its chief source of revenue, and any attempt to abridge this right might lead to provincial bankruptcy. The right to raise revenue by direct taxation of which the mining royalties are a species, is an undoubted right, and one which would involve the gravest consequences if interfered with in the slightest degree.

Third, one of the objections is that the Act is made retroactive in its operation. This is very easily explained. The government of Nova Scotia determined upon the policy of readjusting the coal royalties in the early part of February, and sent notices to that effect in writing to all the coal owners in Nova Scotia. This was a distinct intimation to them that legislation would be introduced by the government at the ensuing session, fixing the royalty on all coal removed from the mine at ten cents per ton royalty, and they were notified to make their arrangements for the season's work accordingly. In the Act chapter 3 of the Acts of 1892, you will find that by sections 2, 3 and 4, provision is made that in all cases where contracts, either written or of a verbal character, had been entered into prior to the 23rd of February, which was ten days after the notice had been mailed, that the royalty should be paid under the old basis. I think that this removes the suspicion of unfair dealing on the part of the government with any of the coal owners.

Fourth, the government might fairly take the ground in relation to this application, that the legislation complained of, being strictly and unquestionably within the legislative rights, it is not called upon to explain, justify or defend the provisions of its measure. Independent legislative authority I interpret to mean the right to legislate without restriction within the compass of its legislative powers. This includes the right to introduce legislation that some people may think wrong. In fact, no Act of parliament has ever yet been passed that has not met with opposition and adverse criticism from some, and most legislation is denounced by half the population. But I do not think the principle could be entertained for a moment, that this constitutes a reason why any party should interfere to override the rights and powers which the constitution of the country has vested in any legislative body.

Fifth. Nevertheless, as the memorial alleges breach of faith and an excess of legislative authority, I am quite content to submit for the consideration of his Excellency the Governor General, an answer to all these imputations, which I do not hesitate to say are without a shadow of foundation in any sense whatever. The legislation in relation to coal royalties I maintain are not only within the legislative authority of the province, but are entirely in accordance with what is right, just and equitable, and do not even come within the possibility of a suspicion of breach of faith. When prior to 1886 the question of renewals was being considered by the government during the meeting of the legislature in 1885, representatives of the coal owners from all parts of the province waited upon the government, and discussed the whole question. It was intimated then that the fact that the government had a right after 1886 to alter and revise the rate of royalty would likely be an injury to the coal mining industry and might prevent capital from seeking investment, whereupon the government at that time distinctly offered to introduce an Act to authorize the government to enter into a contract with the leaseholders, to the effect that the royalty should not be increased beyond a certain maximum figure which should be agreed upon. This the coal owners, after some consideration, declined, and section 4 of chapter 4 of the Acts of 1885 was put in deliberately by the government for the object of notifying clearly the coal owners that this increase would take place whenever in the discretion of the legislature it was deemed advisable. That you may have as full understanding of the position which the government assumed in this matter, I append a copy of a report made by me for the use of the government, January 12, 1892, and also the opinion of Mr. W. B. Ross, Q.C., which I specially obtained. Although quite satisfied in my own mind that the government had the most absolute legal and moral right to inaugurate this legislation, I thought it desirable to obtain the opinion of independent counsel upon the subject, and I submitted to Mr. Ross these two propositions for an answer. First, has the legislature the right to increase or diminish the coal royalty after 1886? Second, would an increase in the coal



royalties in 1892 during the currency of existing leases, constitute a breach of faith with the lessees or affect the honour and integrity of the government or the legislature? Mr. Ross's opinion on these points appended.

I have, &c.,

J. W. LONGLEY,

*Atty. Gen. Nova Scotia.*

*Memorandum from Hon. Attorney General Longley, re Coal Mines.*

The first grants issued by the government of Nova Scotia after it became established as a province, reserved nothing in the way of minerals, but gold, silver and other precious metals. Later on, about the year 1764, coal was expressly reserved in the old grants and still later, about the year 1808, iron and other minerals were likewise reserved in the grants. For all practical purposes, it may be said that the coal in all the mines in Nova Scotia has been reserved in grants issued in the localities where these coal formations are found, so that the right of the government to impose rentals or royalties on the product of coal is universal.

On the 25th day of August, 1826, by letters patent, expressed to be made by His Majesty King George IV., certain mines and minerals in the province of Nova Scotia were demised to H. R. H. Frederick Duke of York, for the term of sixty years, at the rents and royalties therein mentioned, which rents I believe amounted to £3,000 a year. Subsequently an agreement was entered in on the 12th day of September, 1826, whereby certain mines and minerals in this province which were not included in, or were excepted out of the said letters patent, were demised to John Bridge and others, who had received an assignment from the Duke of York of his interests in his lease from this province. After a time the government and parliament of Nova Scotia became satisfied from the development of the coal mining industries of this province that a great mistake had been made and a great injustice done the province in thus parting with its entire interests in valuable coal deposits for such a limited rental, and efforts began to be made in the legislature to have this improvident arrangement set aside. Negotiations of various kinds were entered into with unsatisfactory results, until in 1853 the legislature of Nova Scotia passed an Act, the purport of which was that all leases of coal mines that were not being effectively worked should be liable to forfeiture under which it was proposed to re-acquire the title to all those portions of the coal areas of Nova Scotia, that were not being actively and effectively worked by the General Mining Association of England, a body corporate which had acquired the rights of the Duke of York and other patentees.

In 1857, however, a more direct attempt to get the matter settled was made and two delegates, the Hon. J. W. Johnson and A. G. Archibald, were sent from this province to England, to negotiate a basis of agreement between the government and the General Mining Association whereby a more satisfactory arrangement could be entered into. They came to an agreement which was in substance as follows:—

The General Mining Association, were to have leases, which were to extend to August 15, 1886, the period of time at which the original lease would expire, of three areas in the Island of Cape Breton, one in the county of Pictou and two in the county Cumberland. Some of those areas embraced several square miles. They were to pay a royalty of 6d. currency per ton on all quantities up to 250,000 tons and 4d. per ton on all quantities over that.

It also provided that the province should not allow any person to mine coal in Nova Scotia at a less royalty or on more favourable terms, and it was also covenanted that the province should not, without the consent of the association, impose an export duty on coal. All the other coal areas of Nova Scotia were by this agreement surrendered and transferred absolutely to the province of Nova Scotia.

After this agreement was carried into effect, the legislature provided that the same royalty should be imposed upon the lessees of other coal mines, as were fixed as the maximum rate for the General Mining Association. I have no doubt that the legislature of Nova Scotia would have a right at any time prior to 1886 to have imposed a greater royalty than 6d. per ton upon coal mined at any other than the mines leased to the General Mining Association. But of course it would have been unfair, and contrary to public policy to have done so.

The leases which were issued between 1858 and 1886, when all leases were to expire, have contained a condition that the government reserved its right to alter or revise the royalty after 1886. When August 15, 1886, arrived, as I understand it, the government of Nova Scotia were at liberty to take exactly the same course in respect to the coal mines of Nova Scotia and in respect of coal royalties, as they were in a position to take prior to the lease of August 15, 1826. The legislature in 1885 made some provision in regard to a change in the amount and mode of reckoning the royalty. Hitherto the 6d. per ton had been imposed upon screened coal, and it was provided that in substitution for this a royalty of seven and one-half cents upon all coal mined should be imposed. The Acts of 1885 provided that all leases renewed in 1886 should contain a provision that the royalty might be increased, diminished or otherwise changed by the legislature. This was a notice to all lessees in the province that not only had the province a right to absolute control in the amounts of royalties imposed, but that it was explicitly to be understood that it held itself at liberty to exercise this right whenever it chose. The leases were renewed in 1886 and contained this provision. I am told by the department that some lessees preferred to take their renewal in the form of the original lease, which contained the words "subject to the right of the legislature to revise or amend the royalty after the year 1886." In my view this form of lease in no degree limits or abridges the absolute and unrestricted power of the legislature to fix whatever royalties it may see fit at this time.

I have therefore to advise that in my view there is no contract or legal obligation existing between any coal lessee and the government of this province, which prevents the government and legislature from increasing, changing or diminishing, if it chooses, the royalty imposed for coal taken from the mines which belong to the province.

J. W. LONGLEY,

*Attorney General.*

January 12, 1892.

*Mr. W. B. Ross, Q.C., to Hon. Attorney General Longley.*

HALIFAX, 18th April, 1892.

#### *Re COAL ROYALTIES.*

DEAR SIR,—I have your letter of the 16th inst. in respect to the above matter, and have to say in reply thereto:—

1. That the rights of lessees of coal mines must be determined by the statutes of the province of Nova Scotia, and the leases made under them. This follows from the transactions between the province of Nova Scotia and the assigns of the Duke of York and others in 1857, and chap. 1 of 1858, which gave effect, so far as this province was concerned, to these transactions. I do not think it necessary to refer to these transactions, which are set out in the Journals of the House of Assembly for 1858, but will proceed to examine the leases made in 1858 and after, together with the statutes of the province, with the view only of determining the questions put to me.

2. The lease made to the General Mining Association in 1858, and to others then and since up to Aug. 15, 1886, contained no covenant or provision for a renewal thereof. If then such lessees have any right of renewal, it must be by statute. I am of opinion

that the rights of all lessees where leases terminated in Aug. 1886, (and these included all leases then extant) are to be determined by section 105 of chap. 7, R. S., 5th series. I am not aware of any statute passed between 1858 and 1886 that gave to any lessee of a coal mine a right to a renewal that would not be displaced by chap. 7.

Under section 105 of chap. 7, I am of opinion that the Commissioners of Mines might have in August, 1886, issued leases to the lessees therein named, containing "terms, conditions, and covenants as contained in the original lease," excepting in so far as these might be inconsistent with any statute then in force, including chap. 7 itself. It must be borne in mind that the legislature was by that statute bestowing a privilege that these lessees had no right to demand, and was virtually saying, if you give notice as required we will give you either (a) a renewal of your old lease on the terms and conditions therein contained; or (b) instead thereof we will give you a renewal with such terms as we may see fit to provide by this or any other statute.

If a lessee obtained a lease under either one or the other of these alternatives, the statute would be complied with, and no complaint could be made by him. It is not the lessee who can say, I must have this or that as I choose. On the contrary, it is the Crown or legislature which says, I will give you this or that—not both, but either one or the other, and when I have given you one of the two, there is an end of the matter. In other words the statute must be read from the standpoint of the owner of the mines, and not from that of the lessees. Putting it in another, and more strictly correct way, chap. 7, section 105, is a direction to the Commissioner of Mines to do one or the other. He has done one of the two, and therefore has complied with the statute.

3. This clears the way for answering your questions. I understand that in some of the leases granted after 1886 the following clause will be found, "provided also that the legislature shall be at liberty to revise and alter the royalty imposed by these presents, in or after the year 1886 as they may think fit," and in others it will not. In my opinion, it makes no difference whether they do or not. As I have already said, the Commissioner would be bound by the statutes in existence in August, 1886, when these leases terminated.

In 1886 I am instructed that leases were granted containing the clause provided for in chap. 4, of 1885, section 4, "All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished, or otherwise changed, by the legislature," and that several leases were granted containing the proviso on the same subject which the leases referred to above, granted before 1886 contained.

I am of opinion that these provisos mean exactly the same thing, viz.:—We reserve the right in 1886, or at any time after, to alter the royalty as we see fit. The word "alter" covers "increase" as well as "decrease". It means to "change". It would be difficult to make the proviso wider than "to change as you please."

Let us suppose an ordinary lease reserving a quarterly rent of \$100, with a proviso that the landlord might alter the rent at any time after a particular year as he saw fit. It cannot be argued that he would not have a perfect right to make the rent such sum as he chose, at any time after the time named. The whole case turns on section 105 of chap. 7, R. S. If my view of this is correct, there is nothing to argue.

I have to say to your first question "yes," and to the second "no."

Yours truly,

W. B. ROSS.



*Petition of the Glace Bay Mining Company, (Ltd.) to His Excellency the Governor General in Council.*

*To His Excellency the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, &c., &c., the Governor General of the Dominion of Canada in Council :*

The petition of the Glace Bay Mining Company, limited, humbly sheweth :

1. That your petitioners are a coal mining company incorporated in 1862 under an Act of the legislature of the province of Nova Scotia, having their head office in Halifax, N.S., and have worked continuously since 1862, a coal mine at Little Glace Bay, in the county of Cape Breton, under certain leases and renewals thereof, issued by the authority of the legislature of Nova Scotia through the Chief Commissioner of Mines.

2. That your petitioners' original leases were obtained in 1862 and 1865 and were officially numbered 4, 12 and 16. They expired on the 25th August, 1886, but by section 102, chapter 9 of the Revised and Consolidated Statutes of Nova Scotia, fourth series, 1873, were made renewable for 20 years after the date of their expiration "upon the same terms, conditions and covenants as contained in the original lease."

3. In your petitioners' original leases the royalty payable yearly, was fixed at six-pence per ton of the coal sold, except slack coal, which was exempt from royalty. Thus in 1873, by the legislation above referred to, your petitioners were legally assured that upon giving notice in writing to the Chief Commissioner of Mines at least six months previous to the 25th day of August, 1886, of their intention to renew their leases for a further period of 20 years, they would be entitled to a renewal thereof for such extended term at the same rate of royalty as was specified in their original leases. Any legislation subsequent to that in 1873 referred to, injuriously affecting the interests of your petitioners as lessees, raising the rate of royalty, for example, prior to 1906, or declaring that the legislature may increase it as they may think fit, your petitioners submit would be a breach of legislative faith, and contrary to the just principles which should control the exercise of legislative power.

4. On the 23rd of December, 1885, your petitioners, by letter, notified the Chief Commissioner of Mines of their intention to renew their leases, and in February, 1886, received from him three renewal leases, numbered 14, 15 and 16 which your petitioners accepted, supposing them to be correct, and have since held. These renewals are for a period of 20 years from the expiration of the original leases, and the royalty is fixed at seven and a half cents per ton on all coal sold, slack coal included ; a change to which your petitioners did not object, considering it as not more than the equivalent of the original rate, and up to the 31st December, 1891, they paid their royalty according to the changed rate, and are willing to continue to do so.

5. In your petitioners' renewed leases a clause was inserted which reads as follows :—" Provided that the legislature shall be at liberty to increase or diminish or otherwise change the royalty imposed by these presents or renewals thereof, as they may think fit." Your petitioners submit that in view of section 102, chapter 9 of the Revised Statutes, fourth series, that clause cannot be held to mean that the royalty might be increased beyond what would make it equal to the rate fixed in the original leases ; for to increase the original royalty would be a violation of the law of 1873, which entitled your petitioners to renewals upon the same terms, hence at the same rate of royalty, as stated in their original leases. The legislature, your petitioners submit, might subsequent to 1873 lower the royalty, but they could not honourably increase it beyond the rate fixed in their original leases.

6. Your petitioners submit that the clause in question looking to a possible change of the royalty from 7½ cents per ton, was added to the Royalty Bill of 1885 because it was doubtful whether or not the new rate would yield a revenue equivalent to the old. If it were found to yield more, the legislature might lower the rate, if less, they might increase it. This, your petitioners submit, is apparent from what was said in the House of Assembly in 1885, when the bill changing the coal royalty was discussed.

The Chief Commissioner of Mines as officially reported in the debates on the Royalty Bill introduced by him said: "Now, sir, the object of the government has been to get as nearly as possible an equivalent rate to the present rate of  $9\frac{7}{10}$  cents per ton, a uniform rate that will yield an equivalent revenue to the present rate." The Hon. Mr. Fielding said: "The bill in the main was satisfactory to mine owners. The real difficulty that he saw suggested was, that the government might be making a mistake and that they had not the necessary information. He was going to suggest that the bill might be passed, with the provision that all leases issued should contain a stipulation that the royalties might be increased or diminished, which would leave the House free to make a change next year; unless some such provision was made, parties taking leases might complain."

In accordance with the Hon. Mr. Fielding's suggestion, a clause was added to the bill reading thus:

4. "All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished, or otherwise changed by the legislature."

In section 2 of the bill the royalty on coal was fixed at  $7\frac{1}{2}$  cents per ton.

7. Your petitioners are advised that the above quoted section 4 applies only to new leases, not to renewals, and they submit that the Chief Commissioner of Mines appears to have been of that opinion, because after the passing of that Act he issued some renewals which did not contain the provision in question, and your petitioners submit that if it could be legally omitted in some renewals, it could not be legally inserted in others. "All leases" must either include "all" renewals, or be restricted to new leases. The Chief Commissioner of Mines apparently took the ground that "all leases" did not mean all renewals, hence he should not have inserted that provision in your petitioners' renewals. And your petitioners submit that they should not be bound by the said provision in their renewals unless its insertion was required by the Act of the legislature. They further submit that if any Act of the legislature authorized the insertion in their renewals of a provision that the royalty might be increased beyond the rate named in their original leases, it would be a repudiation of the legislation of 1873, already referred to.

8. Ever since the year 1885 your petitioners have paid royalty at the rate of  $7\frac{1}{2}$  cents per ton, as specified in their renewals, but under an Act of the legislature passed in April, 1892, the rate of royalty has been increased to ten cents per ton to take effect from the 23rd February last. Further, section 118 of the said Act provides that the increased rate may be further increased by the legislature. Thus, although in 1873 the legislature of Nova Scotia by their Act assured your petitioners, as holders of coal leases, that they would be entitled in 1886 to renewals for twenty years upon the same terms as contained in their original leases, the same legislature in 1892 increased the royalty  $33\frac{1}{2}$  per cent above the equivalent of the rate specified in their original leases and in the renewals thereof. This legislation in 1892 your petitioners submit, is a gross invasion of their legal rights, and if allowed to stand is calculated to destroy all confidence in rights granted by the legislature.

Your petitioners therefore humbly pray that the said section 117 of chapter 1, 1892, in so far as it relates to coal; the said section 118 of said chapter 1, and the said section 1 of chapter 3, 1892, may be disallowed.

And your petitioners as in duty bound will ever pray, &c.

Glace Bay Mining Company Limited.

by EDWARD P. ARCHBOLD, *President*.

JAMES R. LITHGOW, *Manager*.



*Correspondence between the Honourable W. S. Fielding and Mr. J. Lithgow, Treasurer and Manager Glace Bay Mining Company.*

*Mr. Lithgow to Hon. W. S. Fielding.*

DEAR SIR,—It occurs to me to make one more appeal to you and through you to the government of Nova Scotia, to do the Glace Bay Mining Co., Ltd., an act of justice.

If your legal adviser will show that we are not justly and legally entitled to what I am about to ask of you, then we must be content. Our case is briefly as follows:—

1. Prior to 1886 we held and still hold, three coal leases which expired in 1886, but by the legislation of 1873 were renewable for three periods of twenty years each, up to 1946, upon the terms, conditions and covenants of the original leases.

2. There was nothing in our original leases touching a change in the royalty. It was fixed at 6d. per ton, with slack free.

3. In 1873 and up to at least 1883, we were entitled to renewals up to 1946, with royalty fixed at the rate named.

4. The foregoing being admitted to be correct, without a breach of provincial faith, we were entitled to such renewals in 1886.

Allow me to illustrate my contention. Suppose I owned a large wheat farm and gave you a lease of it in 1865 for 21 years, to terminate in August, 1886, at a rental of  $7\frac{1}{2}$  cents per bushel of wheat raised and sold by you. Then, suppose that in 1873, I assured you by a written document that you, by giving me six months' notice prior to August, 1886, would become entitled to renewals of your lease for 20, 40 or 60 years from 1886, on the terms of your original lease. What would you think of me if, two or three years prior to 1886, I wrote you that you could have renewals, but they must contain a provision that the rental may be raised as I may see fit? Would you regard me as an honest man? Would you not call my second proposal repudiation or something like that? But again, suppose, as you could not help yourself you accepted a renewal with that provision, inserted, thinking probably that the rent would never be raised, the owner being a just man, and in 1892 you were suddenly notified by me that the rent up to 1906 would be 10 cents per bushel instead of  $7\frac{1}{2}$  cents; and up to 1926 it would be not over  $12\frac{1}{2}$  cents; and after 1946, well, I would not say what it might be; how would you feel towards me?

For a dozen years at least, you believed you were sure of renewals up to 1946 at  $7\frac{1}{2}$  cents per bushel, and in 1892 you find you cannot get them from me for the periods I have promised, even at  $33\frac{1}{3}$  per cent advance on the original rental, could you regard me as an honourable man? Before you could do so, you would say: "Mr. Lithgow, give me the renewals you assured me in 1873 I would be entitled to in 1886."

Now, I beg to say to you, with all due respect, give us the renewals we were assured by the legislation of 1873 we were entitled to, on giving six months' notice prior to August, 1886, on the terms, conditions and covenants of our original leases; else I must appeal to the people to do us justice.

To enable you to settle with us in accordance with existing legislation, we will accept leases running until 1946 at ten cents royalty on all coal sold, save the 60,000 tons we sold in January last.

Holders of leases issued since 1866 are not in the position we are to claim renewals at the old rate of royalty, for the leases since '66 had the "revise and alter" clause in them.

I remain, &c.,

J. R. LITHGOW,  
*Treas. Glace Bay Mining Co., Ltd.*



*Hon. W. S. Fielding to Mr. J. R. Lithgow.*

HALIFAX, 18th May, 1892.

DEAR SIR,—I beg to acknowledge the receipt of your letter of the 6th instant, which reached me on my return to town after a few days absence.

I regret that I was unable to agree with you in your views respecting the coal royalties.

Pressing engagements render it impossible for me to discuss the subject at any length with you at present. A brief statement, however, will be a sufficient answer to your letter.

1. It is true, as you state, that your original leases referred to contain "nothing touching a change in the royalty."

2. But it is also true, although you do not state it, that those original leases contained nothing touching a renewal of the leases; consequently, as far as any contract between your company and the government was concerned, your rights ceased and expired in 1886, and if you had then received no leases at all you would have had no cause of complaint.

3. The mining laws had, however, been amended from time to time, not as a matter of special contract with your company, but in the general interest of the province. You seem to think that you have a right to pick out of twenty years of legislation such parts as you like and claim the benefit of them, while ignoring all the rest. It should not be necessary for me to argue against such a view. If, having no rights whatever under your leases after 1886, you desired to claim rights under the general law, you had to deal, not with selected parts of the statutes, but with the whole law. You were not bound to continue to work your mines. You were at liberty to withdraw from the business on the termination of your contract. But you preferred to apply for new leases under the law as it then stood, including a provision respecting the right of the government to increase the royalty. You did so apply, the leases were granted, and you went on your way rejoicing in privileges which the legislature had generously given you, but which it might have withheld altogether without affording you a shadow of cause for complaint or breach of contract. That you should have applied for these privileges, accepted them and enjoyed the advantages of them for nearly six years, and now assail the legislature which gave them to you, seems to me to be most unfair.

If in any "appeal to the people" which you desire to make, you will include this statement of the case, I shall be content to await their judgment. I have the fullest confidence that the course pursued by the government in this matter has been in the public interests, and that ample justice has been done to every private interest affected by the legislation.

Yours faithfully,

W. S. FIELDING.

*Mr. J. R. Lithgow to Hon. W. S. Fielding.*

HALIFAX, 19th May, 1892.

DEAR SIR,—I beg to acknowledge your valued favour of the 18th and to reply thereto.

1. It is true that our leases, in common with all other leases issued between 1858 and 1866, contain nothing touching renewals, but you are certainly wrong when you say "consequently, as far as any contract between your company and the government is concerned, your rights ceased and expired in 1886, and if you had then received no leases at all, you would have had no cause of complaint." You know that by the legislation of

1866 we became entitled to renewals in 1886, and again by the legislation of 1873 we were entitled to renewals in 1886 "upon the terms, conditions and covenants of our original leases," upon giving six months' notice prior to August, 1886, of our intention to renew our leases. That notice we gave. How then can you affirm that had we received no leases (renewals you mean) in 1866, we would have no cause of complaint? Do you undertake to say the government could legally have refused to give us renewals? Do you hold that it was optional with the government to renew or to refuse to renew our original leases. You know that the government was bound by the law of Nova Scotia to issue the renewals we applied for in accordance with the law. "No cause of complaint had we not got any renewals in 1886." You surely cannot hold to that opinion. The contract embodied in our original leases issued by the government between 1858 and 1866 was legally renewable for three periods of twenty years each, from August, 1886, upon the terms, conditions and covenants of the original leases, and we had by law the right to demand such renewals up to six months prior to the expiration of the original leases in August, 1886.

2. I have never claimed that the mining laws were amended as a matter of special contract with our company, nor have I claimed the right to pick out of twenty years of legislation such parts as I like and claim the benefit of them, while ignoring the rest. Hence it was not necessary for you to argue against that view. We had legal rights to renewals of our original leases, and in December, 1885, applied for renewals as we had a legal right to do, and as all holders of leases issued since 1858 had the same rights to do, and the government was bound by law to give them on the same terms, &c., of the original lease, and as prescribed by any Act of the legislature up to the time of issuing the renewals.

3. The revision and alteration of the royalty made in 1885 was no infringement of the rights guaranteed to the holders of leases by previous legislation, inasmuch as it did not increase the royalty. Even the clause that the royalty "might be increased or diminished as the legislature might see fit," you must remember, or if you do not, can ascertain by reference to the debates in the House on the change in royalty, was suggested by yourself, not with the view to increasing the provincial income from the coal royalty, but in order that if  $7\frac{1}{2}$  cents on all coal were found to yield more revenue than the original  $9\frac{7}{10}$  cents on screened, with slack free, it might be diminished, and if found to yield less, it might be increased by, say,  $\frac{1}{2}$  a cent per ton. It was distinctly stated by the Hon. Commissioner of Mines in those debates (in 1885) that all the government wished was a royalty equivalent to the old rate. The intention of that clause, which was to be inserted in all leases (not in renewals) issued after the passing of the Act authorizing it, was clearly stated by yourself, the Attorney General, and the Commissioner of Mines, and you will admit was not to justify any increase beyond the old rate, which in truth could not be increased without a legislative breach of faith, seeing that for many years previously, holders of leases were assured that they could obtain their renewals on the terms of their original leases—hence not exceeding the original rate of royalty—up to August, 1946.

Yes, we applied for renewals, accepted them and enjoyed the advantages of them since 1886, and I respectfully submit that without the glaring breach of legislative faith recently enacted, we should have continued to enjoy them up to August, 1946.

In any appeal to the people I may make, your sentiments shall be published as you desire.

Your very respectfully,

J. R. LITHGOW,

*Treasurer.*

*Hon. W. S. Fielding to Mr. J. R. Lithgow.*

HALIFAX, 19th May, 1892.

DEAR SIR,—I beg to acknowledge receipt of your letter of this date in relation to coal royalties.

I think there is danger of some confusion of the words "government" and "legislature," in dealing with this question. The government had no power except such as the legislature conferred upon it. The government is merely the instrument for carrying out the directions of the legislature. It is with the legislature rather than with the government that you have to deal.

In my letter of 18th inst., I pointed out that your original leases contained nothing touching a renewal, and I added, "Consequently, so far as any contract between your company and the government was concerned, your rights ceased and expired in 1886, and, if you had then received no leases at all, you would have no cause of complaint."

You dispute this, and you ask if I will undertake to say the government could legally have refused to give the renewals. Let us assume that, in view of the legislation that had in the meantime been passed, the government were bound to give you renewals. But I must point out most distinctly that the legislature was under no obligation whatever to you to pass such Acts. If it had not passed them, and if you had been left to stand upon your lease, you would have had no just cause of complaint.

You would have received all that the government had contracted to give you. Whatever privileges you have received since 1886, you have received, not because you had any contract right to them, but because the legislature in its wisdom and generosity was pleased to give you such privileges.

But if it had given you nothing, there would have been no breach of faith.

You say: "We had legal rights to renewals of our lease, and in December, 1885, applied for renewals, as we had a legal right to do, and as all holders of leases issued since 1858 had the same right to do, and the government was bound by law to give them on the terms of the original lease and as prescribed by any Act of the legislature up to the time of issuing renewals." Well, in this passage you admit the whole case. You have no rights whatever except such as were prescribed by the law as it existed at "the time of issuing the renewals." A part of that law reads as follows:—

"All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished, or otherwise changed by the legislature."

It was under that law that you applied for leases. The leases were granted to you in 1886 in conformity with that law and accepted by you without any question. The leases show on their face the right of the government to increase the royalty. Is it not preposterous then for you to come forward and deny the government's right which is so clearly set forth on the very document which you hold?

You say that clause was inserted in the Act of 1885 at my own suggestion. That is perfectly true. Every outstanding lease which contained any right of renewal contained also a specific declaration of the right of the government to revise and alter the royalty in and after 1886. Nobody was rash enough to question that right. It was desirable that every lease to be issued in and after 1886 should contain on its face an emphatic recognition of the right; hence the insertion of the clause which was unanimously approved by the House. You say that at the time it was not intended to increase the royalty. That is quite true. I stated, and every other member of the government who discussed the question, stated, that we did not desire at that time to obtain a larger royalty than the rate then existing, namely, nine and seven-tenths of a cent per ton on round.

The language of the Act of 1885 is too plain to admit of a moment's doubt. It must be clear to everybody that although the legislature did not at the moment wish to



increase the rate of royalty, it did wish to declare most emphatically the right to increase it at any future time. The government's views in this respect met with the unanimous approval of the House of Assembly, and I am quite satisfied that they have the approval of the public at large.

If there has been any breach of faith in this matter it has not been on the part of the legislature or government. They have kept faith. The only attempted breach is on the part of those who, after obtaining through the favour of the legislature privileges to which they had no contract right, now appear to wish to repudiate their own agreements, and assail the legislature which dealt so liberally with them.

Yours faithfully,

W. S. FIELDING.

*Mr. J. R. Lithgow to Honourable W. S. Fielding.*

HALIFAX, 20th May, 1892.

DEAR SIR,—Your kind favour of the 19th was read on the following evening, and as only good can come out of mutual desire to know the truth of the subject we are discussing, I beg to again trouble you. You say, after reading my letter of the 19th, that the government were bound by legal enactment to renew the leases we held. That the legislature of 1866 and 1873 were under no obligation to pass the Act entitling lessees to renewals any more than to authorize the issue of original leases, no one has ever disputed. The government could only give what the legislature authorized, and hence, if the legislature in 1873 had not enacted that the holders of coal leases issued since 1858, and expiring in 1886, were entitled on giving six months' notice, prior to August, 1886, to obtain three renewals of twenty years each up to August, 1946, we could not have claimed them. And, again, if the legislature had not in the same session enacted that the said renewals were to be issued upon the terms, conditions and covenants of the original leases, we could not claim that the insertion of a clause in the renewals that the royalties might be increased was a breach of legislative faith. Nor could we claim that the increase of one third, that is from  $7\frac{1}{2}$  cents to 10 cents per ton, is a most flagrant breach of the legislation of 1873, under which we were entitled to leases to terminate in August, 1946, at the old rate of royalty, namely,  $9\frac{7}{10}$  cents per ton on all coal except slack, a rate revised and altered in the legislature of 1885, but not raised.

You do not seem to appreciate the fact that a legislature cannot without repudiation, or a breach of faith, enact in 1892 that lessees of coal mines must pay more rent than the same legislature had in 1873 enacted the lessees should pay up to 1946.

A legislature may by enactment put lessees in a better position than they previously were, but they cannot, subsequently, with a breach of faith, make their position worse during the periods of the leases issued to them. A lessor of property has the right to lease it for certain number of years at a certain rental, say from 1862 to 1886 at \$7,500 a year. He has also a right to assure the lessee, in say 1873, that he can have renewals of his lease at the same rental, for three periods of twenty years each from 1886 on giving six months' notice, but he cannot, without a breach of faith, subsequently, either refuse his promised renewals, or give them with a clause inserted that the rent may be increased. Above all, he cannot during the first renewal period given notice to the lessees that the rent shall be increased from \$7,500 to \$10,000 a year until 1906, after which and until 1926 it will not exceed \$12,500 a year. I say, he cannot; well, I mean he cannot honourably, whatever he may be able to do legally. You will have no difficulty in seeing from this illustration what a gross breach of faith the legislature at their last session committed, in raising our rental from  $7\frac{1}{2}$  cents to 10 cents per ton, seeing they had in 1873 guaranteed us that until 1946 it should not exceed  $7\frac{1}{2}$  cents, which you will admit is the full equivalent of the original rate. The fact that the legislature in 1885 authorized the insertion of a clause in leases issued thereafter, to

the effect that the royalty might be raised, I fully admit, but I contend that said clause could not be inserted in the renewals referred to in the legislation of 1873 without a breach of faith. It could be inserted in new leases, but not in renewals which were to be issued upon the terms, conditions and covenants of the original leases, hence, with no increase of royalty.

Again, no one knows better than you do that the said clause was passed by the legislature, simply because it was uncertain whether or not the altered rate of royalty— $7\frac{1}{2}$  cents on all coal, round and slack—would be the equivalent of 9·7 cents on round and slack. Any increase over the old rate, the debates clearly show, especially the statements of yourself and the Hon. C. E. Church, was distinctly repudiated. The clause was enacted so that if  $7\frac{1}{2}$  cents yielded more revenue than the old rate, it might be diminished by a quarter of a cent; and if it yielded less than the 9·7 cents, it might be increased sufficiently to make it the equivalent of the original royalty. It was not designed to legalize any increase of the original rate per ton, either then or at any future time. You cannot show from the debates which led to the enactment of the clause in question, that the legislature did wish to declare most emphatically the right to increase it at any future time. The government or such members of it as spoke during the debates, never hinted that the object of the clause was to declare the right to increase the  $7\frac{1}{2}$  cents beyond what would make it equivalent to the old rate. Admitting that every outstanding lease which contained any right of renewal, contained also a specific declaration of the right of the government to raise and alter the royalty in and after 1886, you should bear in mind that there were in 1873 outstanding leases issued subsequent to 1858 which contain no right of renewal, and no declaration of the right of the government to revise or alter the royalty in and after 1886, and that the holders of such leases—the Glace Bay Mining Company among others—became by the Act of 1873 entitled to renewals on the terms, &c., of the original lease, hence at the old original rate of royalty, or as amended in 1885, but without any clause as to revising, altering, diminishing or increasing the royalty, and that hence the holders of such leases did not receive in 1886 such renewal as they were legally entitled to, seeing they contained the clause under which the government had claimed the right to exact until 1906,  $\frac{1}{3}$  more royalty than the lessees were formerly entitled to pay. Again, the leases which were the same originally as the Glace Bay Mining Company's issued prior to 1866, but which were renewed in 1868, and whose renewals contain the provision that the royalties might be revised and altered in or after 1886, were, I hold equally with leases not then renewed, entitled under the legislation of 1873 to renewals until 1946, on the terms, conditions and covenants contained in the original leases, hence with no provision that the royalty might be revised or altered, increased or diminished. That the royalty might be diminished, or changed, or altered, as long as it was not increased, I fully admit; just as a landlord may freely lower a tenant's rent, or make it payable quarterly instead of monthly, without any breach of faith; but he cannot increase it during the term of his lease. No more may the legislature increase the royalty on those who in 1873 held leases renewable till 1946, at the rate of royalty named in their original leases.

It is true that the Glace Bay Mining Company and other lessees who applied for renewals at least six months prior to August, 1886, obtained them with the royalty specified at  $7\frac{1}{2}$  cents per ton and did not object at the time to the clause that the royalty might be increased or diminished, supposing it was legally inserted, and that anyhow the royalty would not be increased; but, surely, the real binding contract is not a document issued from the mines office, but the Acts of the legislature, construed in accordance with consistency and good faith; for the written lease can only be viewed as binding so far as it has the sanction of the legislative enactments upon which its validity depends.

You speak of privileges we have received since 1886; perhaps you will kindly specify them. I know of no privileges we have received since 1886, from either the government or legislature. Our original leases were obtained nearly thirty years ago. The legislation entitling us to renewals up to 1946, at the old rate of royalty payable yearly, was passed in 1873. All that we have to thank the government and legisla-

ture of 1802, or since 1886, for, is a breach of public faith heretofore unheard of in Nova Scotia, and most injuriously affecting the value of our coal properties.

When the time comes for the Commissioner of Mines to collect 10 cents per ton royalty on run of mine coal instead of the  $7\frac{1}{2}$  cents fairly due, it may be tested whether or not the recent Mines' Act can be enforced. If it can, then another legislature may cancel our leases, or make the royalty 50 cents per ton, notwithstanding the legislation of 1873.

Yours respectfully,

J. R. LITHGOW,

*Treasurer.*

*Hon. W. S. Fielding to Mr. J. R. Lithgow.*

HALIFAX, 25th May, 1892.

DEAR SIR,—I have neither time nor inclination for continuing a discussion with you, which can only amount to a reiteration on both sides of what has already been said. Every material point in your letter of 23rd inst., has been dealt with in my letters already addressed to you. As you did not receive or seek any leases under the law of 1873, nearly every word you say concerning that law—and that means the greater part of your letters—is beside the question. You applied for and obtained leases under the law as it stood in 1886, which law distinctly recognized the right of the legislature to increase the royalty.

If the closing paragraph of your letter is meant to indicate that your company intend to attempt to repudiate its contract and set the law at defiance, I need say nothing more than that the government are not unaware of the power with which the legislature has clothed them in regard to such a case.

Yours faithfully,

W. S. FIELDING.

*Messrs. Drysdale, Newcombe & McInnes to the Honourable the Secretary of State.*

HALIFAX, 31st October, 1892.

SIR,—On behalf of the Acadia Coal Company, the Cumberland Railway and Coal Company and the Caledonia Coal and Railway Company, we beg to inclose a petition for the disallowance of two statutes passed at the last session of the legislature of this province, entitled "An Act to amend and consolidate the Acts relating to Mines and Minerals," and, "An Act respecting the royalties on Coal." The said companies have signed the petition on the 8th page of the document inclosed. We are instructed to request that it be referred to the Governor General in Council.

We remain, etc.,

DRYSDALE, NEWCOMBE & MCINNES



*Petition of "The Acadia Coal Company," the "Cumberland Railway & Coal Company," and the "Caledonia Coal & Railway Company," to His Excellency the Governor General in Council.*

*To His Excellency, the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, &c., &c., Governor General of the Dominion of Canada, in Council :*

The petition of the undersigned lessees of Coal Mines in the province of Nova Scotia, humbly sheweth ;

That a statute has been enacted by the legislature of the province of Nova Scotia, entitled, "An Act to amend and Consolidate the Acts relating to Mines and Minerals," being 55 Victoria (1892), chapter 1. The said Act received assent on the 30th April, 1892.

The 117th and 118th sections of the said Act are respectively as follows :

"117. All ores and minerals (other than gold or gold and silver) mined, wrought or gotten under authority of licenses or leases granted under the provisions of said chapter 7 of the Revised Statutes, fifth series, or of any Act heretofore passed by the legislature of this province, shall be subject to the following royalties to the crown for the use of the province, that is to say :

"(a.) Coal. Ten cents on every ton of two thousand two hundred and forty pounds of coal sold or removed from the mine, or used in the manufacture of coke, or other form of manufactured fuel."

"118. All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished or otherwise changed by the legislature."

A statute has also been enacted by the same legislature entitled, "An Act respecting the Royalties on Coal," being 55 Victoria (1892), chapter 8. This Act also received assent on the 30th April, 1892.

The first section of the last mentioned Act refers to section 117 hereinbefore quoted and is as follows :

"1. The royalty of ten cents per ton on coal as fixed by the said section, shall be held to have taken effect on the 23rd day of February, 1892."

The first mentioned Act provides in the said 117th section, for an increase of thirty-three and one-third per cent in the royalty to be paid by your petitioners and by all corporations or persons operating coal mines in Nova Scotia under existing leases.

Your petitioners are advised and submit that the said sections hereinbefore set forth are contrary to the fundamental principles which should control the exercise of legislative power, and that they constitute a gross and unjustifiable invasion of the vested rights and interests of your petitioners ; that said sections unwarrantably and inequitably violate and disregard the obligation of contracts solemnly entered into between Her Majesty the Queen, represented by the Commissioner of Public Works and Mines for the said province, of the one part, and your petitioners of the other part, and if allowed to stand their effect will be to seriously impair, if not destroy, the confidence which should prevail in the continuance of rights granted by the said province ; and further, that not only do the said sections have the effect of so infringing vested rights and impairing the obligation of contracts, but by the last mentioned section such effect is declared to be retroactive.

The foregoing grounds of complaint against the said legislation are, it is submitted, upheld and justified by the following facts and reasons :

Your petitioners previously to 1866 held valuable coal properties in Nova Scotia under original leases thereof granted by Her Majesty. The rate of royalty reserved by such leases was sixpence per ton of 2240 pounds of round coal sold, slack coal being exempt from royalty.

By 29 Victoria (1866), chapter 9, section 1, of the Acts of Nova Scotia, it is provided as follows :

"1. Lessees of coal mines in this province, their executors, administrators, and assigns, holding leases from the Crown, or from the Chief Commissioner of Mines, made since the first day of January, A.D. 1858, or hereafter to be made, shall, upon giving notice in writing to the Chief Commissioner of Mines, at least six months previous to the expiration of such leases, respectively, of their intention to renew such leases respectively for a further period of twenty years from the expiration thereof, be entitled to a renewal thereof for such extended term upon the same terms, conditions and covenants as contained in the original lease, and in like manner upon giving a like notice before the expiration of such renewal term, to a second renewal and extension of term of twenty years, from and after the expiration of such renewal term, and in like manner upon giving like notice before the expiration of such second renewal term to a third renewal, and extension of twenty years from and after the expiration of such second renewed term, provided at the time of giving such notices, and the expiration of such terms respectively, the said lessees, their executors, administrators and assigns, are and shall continue to be bona fide working the areas comprised within their respective leases and complying with the terms, covenants and stipulations in their respective leases contained, within the true intent and meaning of section 104 of the Act hereby amended, and provided that in no case shall such renewal or renewals extend or be construed to extend to a period beyond 60 years from the 25th day of August, A.D. 1886, and provided also that the legislature shall be at liberty to revise and alter the royalty imposed under such lease in or after the year 1886."

In pursuance of the last mentioned statute your petitioners, together with other coal lessees in the said province, procured renewals of their said leases. The rate of royalty reserved by such renewals was the same as in the said original leases, and such renewal leases also contained provisions for further renewals in their terms of the section last hereinbefore quoted.

All leases renewed under the provisions of the said last mentioned section, as well as all other coal leases issued in the said province previously to 25th August, 1886, expired on that day, and according to the terms of the said section, and the provisions of the said leases, were renewable on that day, and on the corresponding dates in 1906 and 1926.

Your petitioners are advised, and they submit, that according to the true construction of the said last mentioned section, and of the said renewal leases, which contained provisions in accordance therewith, the rate of royalty thereby reserved could be revised only once, and that such revision could be made only at one of the renewal periods, namely, either in 1886, 1906 or 1926.

If such construction is not to prevail, then, adopting the construction most unfavourable to your petitioners, and assuming that several revisions of royalty are contemplated, it is obvious that such revisions could be had only at the renewal periods in 1886, 1906 and 1926, and at no other time or times.

The fourth revision and consolidation of the public statutes of the said province took place in 1873. Section 102, chapter 9, of the Revised Statutes of Nova Scotia, fourth series, is identical with the above section of the Act, 29 Victoria, chapter 9, (1866) except that it does not contain the concluding proviso, that is to say, the words "and provided also that the legislature shall be at liberty to revise and alter the royalty imposed under such lease, in or after the year 1886." No such provision as this is contained in any part of the said consolidation of 1873.

The following section (103) of said chapter 9, Revised Statutes, fourth series, is as follows :

"103. New leases in accordance with the provisions of this chapter may be executed to all parties now holding leases which will expire in the year 1886."

Your petitioners are advised, and they submit, having regard to the fact that the aforesaid section 1, of the Act 29 Victoria, chapter 9 (1866), was re-enacted in the said revision of 1873, without the proviso under which the legislature was at liberty "to



revise and alter the royalty in or after the year 1886," that your petitioners and all other holders of then existing coal leases, as well as all subsequent holders of coal leases up to the year 1885, when the Revised Statutes of Nova Scotia, fifth series, were promulgated, acquired the absolute legal right to renewals of their leases, without any increase of rent or royalty, or provision for revising or altering the previous rent or royalty.

Section 105 of chapter 7 of the Revised Statutes of Nova Scotia, fifth series, which came into effect on the 23rd April, 1885, is as follows :

"105. The General Mining Association, Limited, and other lessees of mines other than gold or gold and silver mines in this province, their executors, administrators and assigns shall, upon giving notice in writing, to the Commissioner of Mines, at least six months previous to the expiration of their leases, respectively, of their intention to renew such leases respectively for a further period of twenty years from the expiration thereof, be entitled to a renewal thereof for such extended term upon the same terms, conditions and covenants as contained in the original lease or as prescribed by this chapter or by any Act that may be passed by the legislature of this province, and in like manner upon giving a like notice before the expiration of such renewal term, to a second renewal and extension of term of twenty years, from and after the expiration of such renewal term, and in like manner upon giving like notice before the expiration of such second renewal term to a third renewal and extension of twenty years, from and after the expiration of such second renewal term, provided that at the time of giving such notices, and the expiration of such terms, respectively, the said lessees, their executors, administrators and assigns are, and shall continue to be, bona fide working the areas comprised within their respective leases, and complying with the terms, covenants and stipulations in their respective leases contained, within the true intent and meaning of section 107 of this chapter, and provided that in no case shall such renewal or renewals extend, or be construed to extend to a period beyond eighty years from the date of the original lease, but the renewed lease shall not include in respect of each mine worked a larger area than five square miles.

"(e.) In the case of leases that are eligible for renewal, in which the conditions of renewal embodied therein are different from those prescribed by this chapter, and the lessees thereof are unwilling to have such conditions altered, the commissioner shall have power to renew said leases on the terms contained therein and as prescribed by chapter 9, Revised Statutes, fourth series, and no other."

As to the said last mentioned section your petitioners are advised, and they submit that in construing that portion thereof, which provides that lessees "shall be entitled to a renewal upon the same terms, conditions and covenants as are contained in the original lease or as prescribed by this chapter, or by any Act that may be passed by the legislature of this province," it must be assumed that it was not the intention of the legislature to provide for future legislative action in the shape of a measure purporting to legalize the imposition of an increased royalty in violation of a lease defining what the rent should be. On the other hand, if the language used as to the terms of renewal be considered broad enough to cover the matter of an increase of royalty, then the Act itself was improper, and does not afford any justification for the subsequent action of the legislature in increasing the royalty in violation of existing contract rights.

Until 1885 the said royalty of sixpence per ton of 2240 pounds of round coal, continued to prevail as to all coal leases in the said province.

Sections 1, 3 and 4, of chapter 4, of the Acts of Nova Scotia, 48 Victoria (1885), entitled: "An Act to amend chapter 7, of the Revised Statutes, fifth series, 'Of Mines and Minerals,'" are as follows :—

"1. Section 104 of the chapter hereby amended is repealed and the following substituted therefor :

"All ores and minerals (other than gold or gold and silver) mined, wrought or gotten under authority of licenses or leases granted under the provisions of said chapter 7 of the Revised Statutes, fifth series, or of any Act heretofore passed by the legislature of this province, shall be subject to the following royalties to the Crown for the use of the province, that is to say :



“Coal.—Seven cents and one-half of a cent on every ton of two thousand two hundred and forty pounds of coal sold or removed from the mine, or used in the manufacture of coke or other form of manufactured fuel.”

“3. Nothing in this Act shall compel lessees of coal mines in this province to pay royalties on coal other than on the terms prescribed in the leases now outstanding, until said leases expire; but any such lessee may take advantage of the provisions of this Act, from the date of its passage, if so disposed.

“4. All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished, or otherwise changed by the legislature.”

Your petitioners are advised, and they submit, that in and by said sections 1 and 3 of 48 Victoria (1885), chapter 4, a revision of the coal royalties was made by the legislature, inasmuch as slack coal, which was previously exempt from any royalty, was thereby made subject to a royalty of seven and one-half cents per ton, and the royalty per ton upon round coal was thereby reduced from nine and seven tenths (equal to six-pence old currency) to seven and one-half cents. The average output of slack coal is from thirty to forty per cent of the whole. The said revision was, however, declared by said section 3, to be optional with the lessees in respect of all unexpired leases.

When the time arrived in 1886 for the renewal of coal leases a number of the outstanding leases were renewed in accordance with the option afforded by the last mentioned statute. Your petitioners, deeming it in their interest to maintain the previous rate of royalty, procured renewal leases reserving the royalty on round coal only at the said previous rate of nine and seven-tenth cents per ton.

Further, as to the terms and conditions of such renewals, your petitioners invoked the provisions of subsection (e), section 105, chapter 7 of the Revised Statutes, fifth series, hereinbefore set out, and obtained renewals of their said leases upon the terms in the said leases prescribed, and as authorized by said chapter 9, Revised Statutes, fourth series, and not upon the terms or conditions otherwise prescribed by said chapter 7 of the Revised Statutes, fifth series.

The renewals so obtained by your petitioners in 1886 did not contain any provision for increasing or diminishing the royalty based upon 48 Victoria (1885), chapter 4, section 4, above set out, and it is submitted that that section is quite immaterial in respect to such leases.

Your petitioners further submit that during the debate in the House of Assembly, in the year 1885, upon the said Act, 48 Victoria, chapter 4, and previously to the passing thereof, it was distinctly declared by the member of the government who introduced the said bill, and by the Premier of the province, that the said bill was not intended to increase, but only to equalize the rate of royalty. The Commissioner of Mines who introduced the bill said:

“Now, sir, the object of the government has been to get as nearly as possible an equivalent rate to the present rate of  $9\frac{7}{10}$  cents per ton—a uniform rate that will yield an equivalent revenue to the present rate.”

It was disputed that the rate of  $7\frac{1}{2}$  cents per ton on all coal would yield the same revenue as  $9\frac{7}{10}$  cents per ton on round coal only. An amendment having been introduced exempting slack coal, the debate was thereupon continued as follows, by the Premier and by Mr. Bell, the leader of the opposition.

Hon. Mr. Fielding said:

“He did not think it reasonable to ask that slack coal should be exempted after the government had based a figure on all coal. The bill in the main was satisfactory to mine owners; the real difficulty that he saw suggested, was, that the government might be making a mistake and that they had not the necessary information. He was going to suggest that the bill might be passed with the provision that all leases issued should contain a stipulation that the royalties might be increased or diminished, which would leave the house free to make a change next year; unless some such provision was made, parties taking leases might complain.”

Mr. Bell said:

"With the consent of the hon. member for Cumberland, and on the understanding that such a clause would be added to the bill, he would withdraw his amendment."

Your petitioners submit that in view of these declarations, and other statements made by members of the government of Nova Scotia, during said debate (which are set forth in the extract therefrom hereto annexed,) it is inequitable and against good faith for the government of said province to claim or pretend that the said section 4 was introduced or passed, save for the purpose of making such an increase or decrease in the rate of  $7\frac{1}{2}$  cents per ton on all coal, as would produce an equivalent rate to the old rate of  $9\frac{7}{10}$  cents per ton on round coal only. Your petitioners are advised that representations made by members of the government during debate may not control the legal effect of a statute, but they submit that if such representations relating to the provisions of statutes affecting contracts with the Crown are to be lightly made, and as lightly repudiated or disregarded, the credit of the province and of the government thereof will be most seriously impaired.

Your petitioners are further advised, and they submit that the fourth section of said Act, 48 Victoria, chapter 4, according to the legal construction thereof, relates only to original leases to be issued subsequently to its enactment, and that it does not relate to renewals which are agreements merely expressing the rights of the parties by virtue of leases previously issued. There is, it is submitted, no legal ground for giving to the language of the section in question retroactive effect, seeing that there is ample office for the words to perform as applied to original leases to be thereafter issued. Moreover, section 3 of the same statute provides that "nothing in this Act shall compel lessees of coal mines in this province to pay royalties on coal other than in the terms prescribed in the leases now outstanding until said leases expire."

The leases to which this petition refers were then in existence and have been renewed, but have not yet expired. It is therefore submitted that those sections cannot be in anywise invoked for the purpose of justifying the present legislative increase of royalty.

It follows, therefore, that a revision of the coal royalties having been made in 1885, which could, and in many cases did take effect in 1886, the power of the legislature, as a matter of contract, to further revise or alter the royalties was exhausted. But whether the statute of 1885 is to be considered as effecting a revision of the royalties or not, the provisions of the statutes and leases are such as to exclude the right of the legislature to make a further revision of the royalties previously, at least, to 1906. Both of these positions have been disregarded in the enactments complained of, notwithstanding the fact that your petitioners and other holders of coal leases in the province, many of whom reside outside the province, have invested very large sums as capital in the various coal mining districts in the province, upon the faith of the contracts so entered into by them, and upon the assurance thereby vouchsafed to them of a certain holding for a fixed rent.

Your petitioners are further advised, and they submit, that the imposition of such increased royalty upon coal under the circumstances hereinbefore set forth is contrary to the general policy of the Dominion of Canada, the intention of which has been to foster and promote the coal and iron industries of the Dominion by imposing a protective duty upon coal, by removing the duty on machinery imported for the use of mining operations, and by imposing a duty upon pig iron imported, and granting a bounty upon pig iron manufactured in Canada. In the manufacture of such pig iron in this province, two tons of coke are used for each ton of manufactured iron. The coke so used is made in this province out of the slack coal produced in the mines of your petitioners and others. The increased royalty of ten cents per ton upon that grade of coal therefore falls largely upon the producers of pig iron in the said province, and thus increases materially the cost of its production.

Your petitioners are also advised, and they submit, that the legislation complained of is *ultra vires* of the provincial legislature, in that it affects trade and commerce by narrowing and controlling the scope of the coal trade of Nova Scotia with other

provinces, and also by seriously impairing the general trade relations of this province so far as they depend upon honesty and fair dealing on the part of its legislature.

Your petitioners therefore humbly pray that the said section 117 of 55 Victoria, (1892,) chapter 1, in so far as it relates to coal, the said section 118, of said chapter 1, and the said section 1 of 55 Victoria (1892), chapter 3, may be disallowed, or in the alternative that the whole of the said Acts may be disallowed, and your petitioners as in duty bound will ever pray, etc.

THE ACADIA COAL COMP'Y, (L<sup>TD</sup>.)

HENRY S. POOLE,  
*Agent.*

CUMBERLAND RAILWAY & COAL COMPANY.

J. R. COWANS,  
*General Manager.*

CALEDONIA COAL & RAILWAY COMPANY,

D. MACKEEN,  
*Agent.*

*Messrs. Henry, Harris & Henry, to the Hon. the Secretary of State.*

HALIFAX, NOVA SCOTIA, 1st December, 1892.

SIR,—As solicitors for the parties interested, we are forwarding to you, by this mail, a petition to his Excellency the Governor General, praying for the disallowance of an Act of the legislature of Nova Scotia, entitled: "An Act to amend and consolidate the Acts relating to Mines and Minerals," being 55 Vic. (1892), chap. 1.

Yours, &c., &c.,

HENRY, HARRIS & HENRY.

*Petition to His Excellency the Governor General in Council.*

*To His Excellency the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, &c., &c., Governor General of the Dominion of Canada, in Council.*

The petition of the undersigned lessees of coal mines in the province of Nova Scotia, humbly sheweth:

That a statute has been enacted by the legislature of the province of Nova Scotia, entitled: "An Act to amend and consolidate the Acts relating to Mines and Minerals," being 55 Victoria (1892), chapter 1. The said Act received assent on the 30th April, 1892.

The 117th and 118th sections of the said Acts are respectively as follows:—

117. "All ores and minerals (other than gold or gold and silver) mined, wrought or gotten under authority of licenses or leases granted under the provisions of said chapter 7 of the Revised Statutes, fifth series, or of any Act heretofore passed by the legislature of this province, shall be subject to the foregoing royalties to the Crown for the use of the province, that is to say."

(a.) "Coal, ten cents on every ton of two thousand two hundred and forty pounds of coal sold or removed from the mine, or used in the manufacture of coke or other form of manufactured fuel."

118. "All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished or otherwise changed by the legislature."



A statute has also been enacted by the said legislative authority, entitled: "An Act respecting the royalties on coal, being 55 Victoria (1892), chapter 3. This Act also received assent on the 30th April, 1892.

This first section of the last mentioned Act refers to section 17 hereinbefore quoted and is as follows: "1. The royalty of ten cents per ton on coal, as fixed by the said section shall be held to have taken effect on the 23rd day of February, 1892."

The first mentioned Act provided, in the said 117th section, for an increase of thirty-three and one-third per cent on the royalty to be paid by your petitioners and by all corporations or persons operating coal mines in Nova Scotia under existing leases.

Your petitioners are advised and submit that the said sections hereinbefore set forth are contrary to the fundamental principles which should control the exercise of legislative power, and that they constitute a gross and unjustifiable invasion of the vested rights and interest of your petitioners, that said sections unwarrantably and inequitably violate and disregard the obligation of contracts solemnly entered into between Her Majesty the Queen, represented by the Commissioner of Public Works and Mines for the said province of the one part, and your petitioners of the other part, and if allowed to stand, their effect will be to seriously impair, if not destroy the confidence which should prevail in the continuance of rights granted by the said province, and further that not only do the said sections have the effect of so infringing vested rights and impairing the obligation of contracts, but by the last mentioned section such effect is declared to be retroactive.

The foregoing grounds of complaint against the said legislature are, it is submitted, upheld and justified by the following fact and reasons:—

Your petitioners previously to 1866 held valuable coal properties in Nova Scotia under original leases thereof granted by Her Majesty. The rate of royalty reserved by such leases was six pence per ton of 2,240 pounds of round coal, slack coal being exempt from royalty.

By 28 Victoria (1866), chapter 9, section 1 of the Acts of Nova Scotia, it is provided as follows:—

1. Lessees of coal mines in this province, their executors, administrators and assigns, holding leases from the Crown or from the Chief Commissioner of Mines made since the 1st day of January, A.D. 1858, or hereafter to be made, shall upon giving notice in writing to the Chief Commissioner of Mines at least six months previous to the expiration of such leases, respectively, of their intention to renew such leases respectively for a further period of twenty years from the expiration thereof, be entitled to a renewal thereof for such extended term upon the same terms, conditions and covenants as contained in the original lease, and in like manner upon giving a like notice before the expiration of such renewed term, to a second renewal and extension of term of twenty years from and after the expiration of such renewal term, and in like manner upon giving like notice of such second renewal, to a third renewal and extension of twenty years from and after the expiration of such second renewal term, provided that at the time of giving such notices, and the expiration of such terms respectively, the said lessees, their executors, administrators and assigns are and shall continue to be bona fide working the areas comprised within their respective leases, and complying with the terms, covenants and stipulations in their respective leases, contained, within the true intent and meaning of section 104 of the Act hereby amended, and provided that in no case shall such renewal or renewals extend or be construed to extend to a period beyond 60 years from the 25th day of August, A.D. 1886, and provided also that the legislature shall be at liberty to revise and alter the royalty imposed under such lease in or after the year 1886."

In pursuance of the last mentioned statute your petitioners, together with other coal lessees in the said province, procured renewals of their said leases. The rate of royalty reserved by such renewals was the same as in the said original leases, and such renewal leases also contained provisions for further renewals in the terms of the section last hereinbefore quoted.

All leases renewed under the provisions of the said last mentioned section, as well as all other coal leases issued in the said province previously to 25th August, 1886, expired on that day, and according to the terms of the said section and the provisions of the said leases, were renewable on that day and on the corresponding dates in 1906 and 1926.

Your petitioners are advised and they submit that, according to the true construction of said last mentioned section, and of the said renewal leases which contained provisions in accordance therewith, the rate of royalty thereby reserved could be revised only once, and that such revision could be made only at one of the renewal periods namely, either in 1886, 1906 or 1926.

If such construction is not to prevail, then adopting the construction most unfavourable to your petitioners, and assuming that several revisions of royalty are contemplated, it is obvious that such revisions could be had only at the renewal periods in 1886, 1906 and 1926, and at no other time.

The fourth revision and consolidation of the public statutes of the said province took place in 1873. Section 102, chapter 9, of the Revised Statutes of Nova Scotia, 4th series, is identical with the above section of the Act, 29 Victoria, chapter 9 (1866), except that it does not contain the concluding proviso, that is to say the words "and provided also that the legislature shall be at liberty to revise and alter the royalty imposed under such lease in or after the year 1886." No such provision as this is contained in any part of the said consolidation of 1873.

The following section (103) of said chapter 9, Revised Statutes, 4th series, is as follows:—

103. New leases, in accordance with the provisions of this chapter, may be executed to all parties now holding leases which will expire in the year 1886.

Your petitioners are advised and they submit, having regard to the fact that the aforesaid section 1 of the Act, 29 Victoria, chapter 9 (1866), was re-enacted in the said revision of 1873, without the proviso under which the legislature was to be at liberty to revise and alter the royalty in or after the year 1886. That your petitioners and all other holders of then existing coal leases, as well as all subsequent holders of coal leases up to the year 1885, when the Revised Statutes of Nova Scotia, fifth series, were promulgated, acquired the absolute legal right to renewals of their leases without any increase of rent or royalty or provisions for altering or revising the previous rent or royalty.

Section 105, of chapter 7, of the Revised Statutes of Nova Scotia, fifth series, which came into effect on 23rd April, 1885, is as follows:—

105. The General Mining Association, Limited, and other lessees of mines other than gold or silver mines in this province, their executors, administrators and assigns shall, upon giving notice in writing to the Commissioner of Mines at last six months previous to the expiration of their leases respectively, of their intention to renew such leases respectively for a further period of twenty years from the expiration thereof, be entitled to a renewal thereof for such extended term upon the same terms, conditions and covenants as contained in the original lease, or as prescribed by this chapter, or by any act that may be passed by the legislature of this province, and in like manner upon giving a like notice before the expiration of such renewal term to a second renewal, and extension of term of twenty years from and after the expiration of such renewal term, and in like manner upon giving notice before the expiration of such second renewal term, to a third renewal and extension of twenty years from and after the expiration of such second renewal term, provided that at the time of giving such notices, and the expiration of such terms, respectively, the said lessees their executors, administrators and assigns are and shall continue to be bona fide working the areas comprised within their respective leases, and complying with the terms, covenants and stipulations in their respective leases contained, within the true intent and meaning of section 107 of this chapter, and provided that in no case shall such renewal or renewals extend or be construed to extend to a period beyond eighty years from the date of the original lease, but the renewed lease shall not include in respect of each mine worked, a larger area than five square miles.



(c.) In the case of leases that are eligible for renewal.

1. In which the conditions of renewal embodied therein are different from those prescribed by this chapter, and the lessees thereof are unwilling to have such conditions altered, the commissioner shall have power to renew said leases on the terms contained therein, and as prescribed by chapter 9 of Revised Statutes, fourth series and no other."

As to the said last mentioned section your petitioners are advised and they submit, that in construing that portion thereof, which provided that lessees shall be entitled to a renewal upon the same terms, conditions and covenants as are contained in the original lease or as prescribed by this chapter, or by any Act that may be passed by the legislature of this province, it must be assumed that it was not the intention of the legislature to provide for future legislative action in the shape of a measure purporting to legalize the imposition of an increased royalty in violation of a lease defining what the rent should be. On the other hand, if the language used as to the terms of renewal be considered broad enough to cover the matter of an increase of royalty, then the act itself was improper and does not afford any justification for the subsequent action of the legislature in increasing the royalty in violation of existing contract rights.

Until 1885 the said royalty of six pence per ton of 2,240 pounds of round coal continued to prevail as to all coal leases in the said province.

Sections 1, 3 and 4 of chapter 4 of the Acts of Nova Scotia, 48 Victoria (1885,) entitled "An Act to amend chapter 7 of the Revised Statutes, fifth series, are as follows:—

1. Section 104 of the chapter hereby amended is repealed and the following substituted therefor:—

"All ores and minerals (other than gold or gold and silver) mined, wrought or gotten under authority of licenses or leases granted under the provisions of said chapter 7 of the Revised Statutes, fifth series, or of any Act heretofore passed by the legislature of this province shall be subject to the following royalties to the Crown for the use of the province, that is to say:—

"Coal. Seven cents and one-half of a cent on every ton of two thousand two hundred and forty pounds of coal, sold or removed from the mine, or used in the manufacture of coke or other form of manufactured fuel.

"3. Nothing in this Act shall compel lessees of coal mines in this province to pay royalties on coal other than on the terms prescribed in the leases now outstanding until said leases expire; but any such lessees may take advantage of the provisions of this Act from the date of its passage if so disposed.

"4. All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished or otherwise changed by the legislature."

Your petitioners are advised and they submit that in and by said section 1 and 3 of 48 Victoria, (1885), chapter 4, a revision of the coal royalties was had or made by the legislature, inasmuch as slack coal which was previously exempt from any royalty was thereby made subject to a royalty of seven and one-half cents per ton, and the royalty per ton upon round coal was thereby reduced from nine and seven-tenths (equal to six pence old currency) to seven and one-half cents. The average output of slack coal is from thirty to forty per cent of the whole. The said revision was, however, declared by said section 8 to be optional with the lessees in respect of all unexpired leases. When the time arrived in 1886 for the renewal of coal leases, a number of the outstanding leases were renewed in accordance with the option offered by the last mentioned statute. Your petitioners deeming it in their interest to maintain the previous rate of royalty, procured renewal leases, reserving the royalty on round coal only at the said previous rate of nine and seven-tenth cents per ton. Further as to the terms and conditions of such renewals, your petitioners invoked the provision of subsection (c), section 103, chapter 7, of the Revised Statutes, fifth series, hereinbefore set out, and obtained renewals of the said leases upon the terms or conditions prescribed and as authorized by said chapter 8, Revised Statutes, fourth series, and not upon the terms or conditions prescribed by said chapter seven of the Revised Statutes, fifth series, excepting the said subsection (a) of section 105 thereof.



The renewals so obtained by your petitioners in 1888 did not contain any provision for increasing or diminishing the royalty based upon 48 Victoria, chapter 8, section 4 above set out, and it is submitted that that section is quite immaterial in respect to such leases.

Your petitioners further submit that during the debate in the House of Assembly in the year 1885, upon said Act, 48 Victoria, chapter 4, and previously to the passing thereof, it was distinctly declared by the member of the government who introduced the said bill, and by the Premier of the province, that the said bill was not intended to increase but only to equalize the rate of royalty. The Commissioner of Mines who introduced the bill said, "Now, sir, the object of the government has been to get as nearly as possible an equivalent rate to the present rate of nine and seven-tenths cents per ton, a uniform rate that will yield an equivalent revenue to the present rate." It was disputed that the rate of seven cents and one-half per ton on all coal, would yield the same revenue as nine and seven-tenths cents per ton on round coal only. An amendment having been introduced exempting slack coal, the debate was thereupon continued as follows by the Premier and by Mr. Bell, the leader of the opposition. Hon. Mr. Fielding said:—

"He did not think it reasonable to ask that slack coal should be exempted after the government had based a figure on all coal. The bill in the main was satisfactory to mine owners. The real difficulty that he saw suggested was that the government might be making a mistake, and that they had not the necessary information. He was going to suggest that the bill might be passed with the provision that all leases issued should contain a stipulation that the royalties might be increased or diminished, which would leave the House free to make a change next year, unless some such provision was made, parties taking leases might complain.

Mr. Bell said—"With the consent of the hon. member for Cumberland and on the understanding that such a clause would be added to the bill, he would withdraw his amendment.

Your petitioners submit that in view of these declarations and of other statements made by members of the government of Nova Scotia during said debate, it is inequitable and against good faith for the government of said province to claim or pretend that the said section 4 was introduced or passed save for the purpose of making such an increase or decrease in the rate of seven cents and one-half per ton on all coal as would produce an equivalent rate to the old rate of nine and seven-tenths cents per ton on round coal only. Your petitioners are advised that representations made by members of the government during debate may not control the legal effect of a statute, but they submit that if such representations relating to the provisions of statutes effecting contracts with the crown to be lightly made and as lightly repudiated or disregarded, the credit of the province and of the government thereof will be most seriously impaired. Your petitioners are further advised and they submit, that the fourth section of said Act 28 Victoria, chapter 4, according to the legal construction thereof, relates only to original leases to be issued subsequently to its enactment, and that it does not relate to renewals which are agreements merely expressing the rights of the parties by virtue of leases previously issued. There is, it is submitted, no legal ground for giving to the language of the section in question retroactive effect, seeing that there is ample office for the words to perform as applied to original leases to be thereafter issued. Moreover, section 2 of the same statute provided that "Nothing in this Act shall compel lessees of coal mines in this province to pay royalties on coal other than in the terms prescribed in the leases now outstanding until such leases expire." Your petitioners' leases which were then in existence, have been renewed, but have not yet expired. Your petitioners having declined to avail themselves of the provisions of sections 1 and 4 of the said statute; it is submitted that those sections cannot be in any wise invoked for the purpose of justifying the present legislative increase of royalty.

It following therefore that a revision of the coal royalties having been made in 1885, which could, and in many cases did take effect in 1886, the power of the legislature, as a matter of contract, to further revise or alter the royalties was exhausted. But whether the statute of 1885 is to be considered as effecting a revision of the royalties

or not, the provisions of the statutes and leases are such as to exclude the right of the legislature to risk a further revision of the royalties previously, at least to 1906. Both of these positions have been disregarded in the enactments complained of, notwithstanding the fact, that your petitioners and other holders of coal leases in the province, many of whom reside outside of the province, have invested very large sums as capital in the various coal mining districts in the province, upon the faith of the contracts so entered into by them, and upon the assurance thereby vouchsafed to them of a certain holding for a fixed rent.

Your petitioners are further advised, and they submit that the imposition of such increased royalty upon coal under the circumstances hereinbefore set forth, is contrary to the general policy of the Dominion of Canada, the intention of which has been to foster and promote the coal and iron industries of the Dominion, by imposing a protective duty upon coal, by removing the duty on machinery imported for the use of mining operations, and by imposing a duty upon pig iron imported, and granting a bounty on pig iron manufactured in Canada. In the manufacture of such pig iron in this province, two tons of coke are used for each ton of manufactured iron. The coke so used is made in this province out of the slack coal produced in the mines of your petitioners and others. The increased royalty of ten cents per ton upon that grade of coal, therefore falls largely upon the producer of pig iron in the said province, and thus adds materially to the cost of its production.

Your petitioners are also advised, and they submit that the legislation complained of is *ultra vires* of the provincial legislature, in that it affects trade and commerce, by narrowing and controlling the scope of the coal trade of Nova Scotia with other provinces, and also by seriously impairing the general trade relations of this province, so far as they depend upon honesty and fair dealing on the part of its legislature.

Your petitioners therefore humbly pray that the said sections ; 117 of 55 Victoria (1892), chapter 1, in so far as it relates to coal, the said section 118 of said chapter 1, and the said section 1 of 55 Victoria (1892), chapter 3, may be disallowed or in the alternative, that the whole of the said Acts may be disallowed, and your petitioners as in duty bound will ever pray, &c.

*Mr. H. T. Beck to the Hon. the Secretary of State.*

TORONTO, 6th March, 1893.

SIR,—I have the honour to transmit to you petition of Hugh St. Quentin Cayley and others praying that his Excellency the Governor General in Council may be pleased to disallow chap. 1 of the Acts of 1892, Nova Scotia, unless the legislative assembly of the province repeal sec. 115 of said Act within the time limited for disallowance.

I also inclose the official copies of the Mining Acts and amendments in question and statutory declaration in support of the facts set out in the petition, together with a list of precedents and authorities relied on. If counsel may be heard, I should be glad to be advised. Such seems to have been the practice in some cases.

The petitioners rely on the following grounds and precedents and authorities for the disallowance of chapter 1 of the Acts of 1892, Nova Scotia, entitled: "An Act to amend and consolidate the Acts relating to Mines and Minerals," unless section 115 of said Act is repealed within the time limited for disallowance.

Recommenda-tion of the Hon. R. W. Scott, acting Minister of Justice, made 18th July, 1876, that the Act passed by the legislature of Prince Edward Island, entitled an Act to amend the Land Purchase Act, 1875, do not receive the assent of the Governor General in Council, adopted.

Extract from report: "Without giving weight or consideration to any great extent to the allegations in the petition which are unsupported by actual proof, he is of opinion that the reserved bill is retrospective in its effect, that it deals with rights of parties now in litigation under the Act which it is proposed to amend, or which may



"yet fairly form the subject of litigation and that there is an absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of 1875."

Recommendation of the Hon. James McDonald, Minister of Justice, upon which an Act passed 4th March, 1881, by the Ontario legislature, entitled: "An Act for protecting the public interests in rivers and streams and creeks," was disallowed by proclamation 19th May, 1881.

Extract from report: "The effect of the Act now under consideration must necessarily be to reverse the decision of the suit (McLaren vs. Caldwell). I think the power of the local legislatures to take away the rights of one man and vest them in another, as is being done by this Act, is extremely doubtful, but assuming that such right does in strictness exist, I think that it devolves upon the government to see that such power is not exercised in flagrant violation of private rights and actual justice, especially when, as in this case, in addition to interfering with private rights in the way alluded to, the Act overrides a decision of a court of competent jurisdiction, by declaring retrospectively that the law always was, and is, different from that laid down by the court."

It is submitted that the enactment complained of is contrary to the policy of the British North America Act of 1867, in that it assumes to construe the intention of a clause in the statute which is *sub judice*, and is therefore an infringement on the judicial power whose authority it should be the policy of the Dominion government to protect and uphold, especially as their appointment is in its hands.

Although the section is unconstitutional, it is necessary to appeal to his Excellency to exercise his powers of disallowance, since a court of law could only have power to declare an enactment *ultra vires*, where the local legislature infringed upon the jurisdiction of the Dominion parliament, or *vice versa*.

Attorney General, (Canada,) v. Attorney General, (Ontario,) per Boyd C., p. 245, 20 O.R.

"The power of disallowance which may operate both on the plane of political expediency and in that of judicial capacity. Its exercise in these days is largely confined to the former."

In Appeal, 19 A.R.

It is under the British North America Act unconstitutional for a legislature to declare what was the intention of a statute passed at a former session, at all events unless the rights of then litigants are preserved.

Governor v. Porter, 5 Humph. 165. Postmaster General v. Early, 12 Wheat. 148. Greenough v. Greenough, 11 Pa. St. 489. Reiser v. Tell Ass'n. 39 Pa. St. 137. Potters Dwarries Stat., p. 70 and notes. Sutherland Stat. Construction S. S., 200 and 201.

I have, etc.,

H. T. BECK.

### *Statutory Declaration of Mr. Frank Cayley.*

I, Frank Cayley, in the city of Toronto, in the county of York, estate agent, do solemnly declare as follows:—

1. I have read the annexed petition of the Executors of the Honourable William Cayley and Andrew Thornton Todd, and the Toronto Coal Company of Cape Breton (Limited), to his Excellency the Governor General in Council, and I verily believe that the allegations and statements therein contained are true in substance and in fact.

2. I am in possession of the books and am intimately acquainted with all matters connected therewith. The said company expended over \$120,000 in acquiring and developing the coal area in said petition mentioned, and in providing plant and machinery for the working of the mine.



3. The said lease expired on the 25th day of August, 1886, and the said company were entitled to a renewal of said lease for a further term of 20 years on their giving six months previous notice in writing to the Commissioner of Mines.

4. Through inadvertence and oversight the Commissioner of Mines was not notified until the 15th March, 1886, although such notice should have been given on or about the 26th day of February previously.

5. The commissioner was again notified on or about the 9th of August, 1886, but took no notice of either application and on the 26th August, 1886, being the day after the expiration of the lease, granted a license to search, to one J. W. Kelly Johnston, a man whom I have been advised is of no substance, and who on the 23rd of September, 1886, following, purported to assign the same to Reynolds and Fairbanks, clerks in the department of the Commissioner of Mines.

6. None of the said parties have spent any money or attempted to develop said mining areas.

7. On the 23rd of August, 1887, the said commissioner granted to said Reynolds and Fairbanks a license to work over said area, and on the 21st of August, 1889, said commissioner purported to grant a renewal of such license to work.

8. On the 14th of April, 1890, Hugh St. Quentin Cayley, on behalf of the estate of the Honourable William Cayley and the petitioners, made applications under the Mining Act, as amended by statute 7, Revised Statutes of Nova Scotia, chapter 23 of the Acts of Nova Scotia, 1889, for a lease of said area.

9. On the 20th of August, 1890, said Reynolds and Fairbanks also made application to said commissioner for a lease of said mining area. The said commissioner ignored the application of Hugh St. Quentin Cayley and granted a lease to said Reynolds and Fairbanks, whereupon an action or information was commenced at the suit of the Attorney General of the province of Nova Scotia, on the relation of said Hugh St. Quentin Cayley, myself and the other executors of the Honourable William Cayley, Andrew Thornton Todd and said company, for the purpose of declaring our rights to the lease of said area as against said Reynolds and Fairbanks, and upon the ground, among others, that our application for lease was made prior to that of said Reynolds and Fairbanks and that the power of the commissioner to grant said license and renewal of license had been repealed by chapter 23 of the Acts of 1889, and that Reynolds and Fairbanks had not preserved their rights, if any.

10. Pending such action, namely, on the 30th of April, 1892, the legislative Assembly of the province of Nova Scotia, by section 115, of chapter 1 of the Acts of 1892, purported to declare the intention of chapter 23 of the Acts of Nova Scotia, 1889, the construction of which statute was then, and still is, *sub judice* in our said action.

11. No notice of the proposed introduction of said clause was given to myself, or as I verily believe, to any of the parties interested in the said company, and the first intimation we had that the legislature had attempted to construe the intention of said Act was, as I am informed by our solicitors in the action, the citation of such amendment at the trial, by the counsel for the defendants Reynolds and Fairbanks, and I believe that said amendment was made in view of the litigation aforesaid.

12. The said mining rights are, I believe, of very considerable value.

And I make this solemn declaration believing the same to be true, and by virtue of the Act respecting extra judicial oaths.

FRANK CAYLEY.

Declared before me at Toronto, in the county of York, in the province of Ontario, this 6th day of March, 1893.

H. T. BECK,

*Notary Public.*

*Petition of Mr. Hugh St. Quentin Cayley and others.*

*To His Excellency the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, G.C.B., &c., &c., Governor General in Council.*

The petition of Hugh St. Quentin Cayley, Frank Cayley and James Strachan Cartwright, executors and trustees of and under the will of the Hon. William Cayley, deceased, and Andrew Thornton Todd and the Toronto Coal Company of Cape Breton (Limited), humbly sheweth :—

1. That the above named company is incorporated by letters patent dated 20th April, 1878, under chapter 43 of the Acts of the parliament of Canada passed in the year 1877, entitled : “An Act to amend the law respecting the incorporation of joint stock companies by letters patent.”

2. That the estate of the Hon. William Cayley and Andrew Thornton Todd, represent a majority in interest of the shareholders of said company.

3. That the said company were on and prior to the 25th day of August, 1886, the holders of a coal mining lease issued under the mining laws of the province of Nova Scotia by Her Majesty, represented in such behalf by the Commissioner of Mines and Public Works of said province of Nova Scotia, to one Patrick Collins, dated the 3rd day of December, 1869, numbered 46 and covering “all and singular the beds and seams of coal whether opened or unopened within, under or upon all that tract of land situated a Little Bras d’Or, in the county of Cape Breton and province aforesaid, and described as follows : That is to say, beginning on the southern shore of the entrance to the Little Bras d’Or at the western line of the General Mining Association’s property, thence by said line south 23° east 127 chains and 20 links to a stake and stone, thence south 75° west 65 chains 25 links to Fortunes’ line fence, thence by said fence and by western side of the road north 37° west 46 chains and 90 links to the shore of the Little Bras d’Or, thence by said shore and the shore of the entrance aforesaid north easterly to the place of beginning ; the corners and distances being described according to, and agreeing with the descriptions contained in the leases granted S. Geautro and D. Laffin, January 1, 1863, and Patrick Collins, December 24th, 1861, containing six hundred and ninety-four acres, more or less, in manner and form as the said area is specified and delineated. Reserving hereout a strip or margin of ten yards in width, running all round the lot above described.”

4. That the said lease was for a term of 20 years, to commence and be computed from the 25th of August, 1866, and expire on the 25th day of August, 1886.

5. That the said company since the date of their said incorporation and prior to the expiration of said lease, expended a large sum of money in acquiring and developing the mining area comprised therein, namely, a sum exceeding the sum of \$120,000, and that they would not have expended said sum had they not expected to obtain a renewal of said lease.

6. That the said company were desirous of obtaining a renewal and intended to renew said lease under provisions of section 105, chapter 7, Revised Statutes of Nova Scotia, 5th series, but through inadvertence and oversight, they omitted to give six months previous notice to the Commissioner of Mines of the company’s intention to renew as provided by the said statutes.

7. That the said company, however, gave notice of such intention to the Commissioner of Mines, on or about the 15th March, 1886, and also on or about 9th August, 1886.

8. That the said commissioner, nevertheless, ignored such notices and on the 26th day of August, 1886, immediately on the expiration of said lease, granted to one J. W. Kelly Johnston, a license to search over the mining area described in said lease, under the provision of sec. 84, Revised Statutes of Nova Scotia, fifth series, which said right to search was on the 23rd of September, 1886, assigned to William K. Reynolds and Edward C. Fairbanks, employees in the department of said Commissioner of Mines.



9. That on the 23rd day of August, 1887, the said Reynolds and Fairbanks applied to said commissioner and obtained a license to work over and upon said area, and on the 21st day of August, 1889, the said Reynolds and Fairbanks applied to the said commissioner and obtained what purported to be a renewal of said license to work.

10. That by chap. 23 of the Acts of 1889, passed the 17th day of April, 1889, by the legislature of the said province of Nova Scotia, the provisions for granting licenses to work, in the statute authorizing the granting and renewing of licenses to work, was repealed, and such attempted renewal was and is null and void.

11. That on the 14th day of April, 1890, application was made by the said Hugh St. Quentin Cayley, on behalf of himself and the said company and the said stockholders, to the said commissioner for a lease of the said mining areas, under the provisions of said statute, chap. 7, Revised Statutes of Nova Scotia, and said chap. 23 of the Acts of Nova Scotia, 1889, in amendment thereof.

12. That on the 20th day of August, 1890, the said Reynolds and Fairbanks also made application to said commissioner for a lease of the said mining area, under the provisions of the statutes, aforesaid.

13. That the Commissioner of Mines, nevertheless, ignored the application of the said Hugh St. Quentin Cayley, and granted a lease to said Reynolds and Fairbanks.

14. That on the 15th February, 1892, the Honourable J. W. Longley, Her Majesty's Attorney General for the province of Nova Scotia, on behalf of Her Majesty, on the relation of your petitioners, instituted proceedings to determine the validity of the application of said Hugh St. Quentin Cayley to obtain a lease of said coal mining areas, and to determine the rights as between your petitioners and the said Fairbanks and Reynolds.

15. That pending such action a certain Act entitled "An Act to amend and consolidate the Act relating to Mines and Minerals," being chapter 1 of the Acts of 1892, was on the 30th day of April, 1892, passed by the legislative assembly of the said province of Nova Scotia, and in and by section 115 of said Act it is hereby declared and enacted that chapter 23 of the Acts of 1889 shall not be deemed to have taken, and did not take, from any holder of licenses to search in force at the time of passing of said chapter, the right to select an area and apply for and obtain a license to work in the same manner as such holder could have, had said chapter not been enacted, and that said chapter shall not be deemed to have taken, and did not take, from any holder of a license to work from the time of passing the said Act, the right to obtain an extension of such license to work for three years upon the additional payment being made as provided in section 95, chapter 67, of the Revised Statutes, fifth series, but all holders of licenses to search at said time are deemed and shall be declared to have the same right to select and apply for such licenses to work, and all holders of licenses at said time shall be deemed and thereby declared to have the same right to such extension as aforesaid, as they would have had if said chapter had not been enacted, and all licenses to work and all such extensions of licenses to work as aforesaid, shall be held to have been as valid and good as they would have been had such chapter not been enacted.

16. That the said section 115 was inserted in the said statute without notice to your petitioners, and as they believe at the instance of the said Fairbanks and Reynolds for the purpose of defeating the proceedings pending before the Supreme Court of Nova Scotia, the legislature thereby usurping the functions of the judge, and assuming to place a construction on the repealed enactments without reserving the rights of their litigants, and the said enactment was evidently aimed at this litigation.

17. Neither the said Johnston, nor the said Fairbanks and Reynolds have ever expended any money in developing the said mining area, and your petitioners believe them to be men of no substance, and that they perpetrated a fraud on the legislature who passed the section in question inadvertently and without due consideration of its effect.

18. The said proceedings are still pending, the trial having taken place, and judgment being reserved.

Your petitioners humbly submit that the Act should be disallowed, for the following reasons, unless the said section is repealed before the time for disallowance expires :



1. Because it assumes to interpret the intention or meaning of a statute under review in a court of law at the time of the passage of the declaratory enactment, thereby usurping the functions of the judiciary.

2. The Act is contrary to the policy of the British North America Act, 1867, inasmuch as it is the province of the judiciary appointed by the Dominion government to construe the meaning of statutes, and the enactment is therefore unconstitutional.

3. The Act is objectionable in declaring what was the meaning of an Act at the time of its passage, without excepting existing litigation from its operation.

4. The said section if allowed to remain in force will have the effect of depriving the petitioners of very valuable rights which they attempted to preserve by applications which the section in question makes nugatory, and validates an abortive application of Fairbanks and Reynolds under the guise of interpreting the statute, but in reality by receiving an appealed enactment affecting pending litigation, and your petitioners will ever pray.

H. T. BECK,  
*Solicitor for the Petitioners.*

*The Hon. the Minister of Justice to Hon. W. S. Fielding.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th February, 1893.

DEAR SIR,—I duly received your telegram stating as follows: "The operations of the Dominion Coal Company would be much facilitated by immediate allowance of their charter, and of the Act for the further encouragement of Coal Mining, recently passed by the Nova Scotia legislature. Our government respectfully ask that his Excellency be advised to pass upon those Acts as early as possible."

As you have no doubt seen by the press, strong remonstrances have been made against these Acts, with a view to their disallowance, and I have promised to transmit to you some representations which have recently been made. I think that in a matter of such grave importance and about which so much feeling exists, we should hardly be asked to anticipate to so great an extent the time fixed by law for declaring the action of his Excellency, unless very important interests are found to depend on such action.

Yours faithfully,

JNO. S. D. THOMPSON.

*Messrs. Josiah Wood, M.P., and R. C. Weldon, M.P., to the Hon. the Minister of Justice.*

OTTAWA, 24th March, 1893.

DEAR SIR,—In your reply to the delegation that waited upon yourself and colleagues in the Privy Council chamber *re* Nova Scotia coal legislation, you suggested that a statement of the case be submitted in writing, and promised to forward the same to the Nova Scotia government.

We herewith inclose a memo. signed by a large number of the members of the House of Commons, and trust you will forward same as proposed, and take such other action to secure the object desired as you may deem expedient.

Yours very truly,

JOSIAH WOOD.  
R. C. WELDON.

*Petition from Mr. R. C. Weldon, M.P., and others to His Excellency the Governor General.*

We, the undersigned members of parliament, being profoundly impressed by the gravity of the following facts, have the honour to bring them to the notice of your Excellency and his advisers:—

In 1892 an Act was passed by the legislature of Nova Scotia, entitled: "An Act to amend and consolidate the Acts relating to Mines and Minerals." The 156th section of this Act is fraught with danger to the public and repugnant to the spirit of the constitution. The foregoing section empowers the Lieutenant-Governor in Council to lease all the coal areas in Nova Scotia, upon such terms as may to them seem proper as to area, duration of lease, taxation and royalty; the minimum royalty, however, being ten cents a ton.

This legislation places the disposal of the coal areas of Nova Scotia in the hands of the Lieutenant-Governor in Council, without reference to the legislature.

It may be observed that legislation as to mines affects the most valuable public property of Nova Scotia, and also materially affects important interests in other provinces of Canada. In our opinion provincial legislation of a character affecting vitally the general interests of the Dominion, should not be by Order in Council. Provincial statutes are, but provincial Orders in Council are not, subject to disallowance by your Excellency in Council. This Act of Nova Scotia, in relegating to the Lieutenant-Governor in Council powers heretofore exercised by the legislature, practically destroys the federal power of disallowance—and is, in our opinion, repugnant to the spirit of the constitution.

Under the authority of the said Act, sec. 156, cap. 1, Acts of Nova Scotia, 1892, the government of Nova Scotia have given a lease to the Dominion Coal Company, a corporation chartered by the legislature of Nova Scotia at its late session. This company is empowered to mine and quarry coal and all other minerals, and to manufacture and deal in the same, to construct, purchase and operate railways, to own and sail ships and barges, and to transport on land and water freight and passengers, to acquire letters patent and patent rights, to own farm lands and buy, sell and deal in farm stock and produce, to construct and operate telegraph and telephone lines, to acquire, hold and deal in shares, stocks, debentures and bonds, and also to acquire all the property and franchise of any other company carrying on any business similar to its own.

It will be observed that under the foregoing powers, the Dominion Coal Company can acquire and control all the coal areas of Nova Scotia, and the means of transporting coal by land and water.

The lease given to the Dominion Coal Company has none of the safeguards against monopoly and extortion which former leases in Nova Scotia contained, as will more clearly appear from the following particulars:—

In the old lease, one lessee could not hold more than two square miles of coal lands.

In the new lease, one lessee holds the entire county of Cape Breton.

In the old lease, the lessee held for twenty years.

In the new lease, the lessee holds for ninety-nine years.

In the old lease, the lessee was subject to the Mines Act, and to any Act which the legislature might from time to time pass for the public protection.

In the new lease, it is stipulated that the terms thereof cannot be in any way affected or altered by the legislature for ninety-nine years.

The new lease, it is true, contains the usual covenants, providing for the *bona fide* and effectual working of the mines and the like; but it will be remembered that under former leases the instrument was forfeited for breach of any covenant, while under the new lease there is in fact no effective way of enforcing these covenants.

The undersigned desire further to point out that the dangers of a coal monopoly are enhanced by the fact that the coal measures of eastern Canada are confined to a few counties in Nova Scotia.

They desire also to urge that coal is an article of prime necessity for domestic purposes, for railways and manufacturing industries, and when such an article becomes a monopoly, the results may be disastrous.

The experience of coal consumers in the seaboard cities of the United States during the past year furnishes conclusive proof of this fact.

Under those Nova Scotia statutes the Dominion Coal Company can acquire and control the entire coal production of Nova Scotia and can raise prices to an oppressive degree.

We, therefore, in view of the above facts, are of opinion that your Excellency should urge the legislature of Nova Scotia at its next session, to amend its mining laws and charters, so as to provide that whenever any company now or hereafter to be incorporated, is declared by joint address of the two Houses of the legislature of Nova Scotia to have violated its covenants or unduly enhanced the price of coal to Canadian consumers, such charge so declared shall be referred to the Supreme Court of Canada, with power to hear and determine, and in case the said charge shall be sustained, the Supreme Court shall avoid the lease or fine the lessees in their discretion.

R. C. WELDON and 77 others.

*Hon. Atty. Genl. Longley to Deputy Minister of Justice.*

HALIFAX, 30th March, 1893.

SIR,—I have carefully read the petition of Hugh St. Quentin Cayley and others praying that his Excellency the Governor General may be pleased to disallow chapter 1 of the Acts of 1892 of Nova Scotia, unless the legislative assembly of the province repeal section 115 of said Act within the time limited for disallowance.

In regard to the authorities and precedents cited, I have no observation to make, except that the principle embodied in the report of the Hon. James Macdonald, Minister of Justice on the Ontario Act for protecting the public interest in rivers and streams, seems open to question, and is not recognized as a conclusive or authoritative statement of the principle. Regarding the facts set forth in the memorial I have also but little to say. It is a fact that the lease of the Toronto Coal Company expired on the 25th of August, 1886. It is likewise true that the law for years and years, had made it essential that six months' notice of an intention to renew was a condition precedent to the right of renewal conferred by the Mining Act, and it is a fact that the application for renewal was not made within the six months in this case, and hence in the judgment of the Department of Mines, acting upon the advice of this department, it was interpreted and upheld that renewals could not be granted. The case of the Toronto Company is not the only one, several other leaseholders failed to make application within the six months, and lost their rights accordingly, except that in most cases those who had neglected to make the application were on hand promptly on the day after the expiry of the lease to make application for the right to search and that precaution was not taken by the present applicants, and the consequence was that the leases became vacant and applications were made which the department had no option but to receive. The application was made as stated by M. J. W. K. Johnstone and subsequent to his application he transferred (for what consideration I know not) his rights to Messrs. Reynolds and Fairbanks, who are not, as alleged, clerks in the Department of Mines, but are clerks in the department of the provincial secretary, which so far as I can see has nothing whatever to do with the legal aspect of the case. Subsequently, as stated in the memorial, Messrs. Reynolds and Fairbanks applied for a lease and the present memorialists also applied.

The question was referred to me as being a purely legal question and I, after due examination of the statutes and of the Act, and acting upon the best interpretation of the law, advised the commissioner that he had no option but to issue a lease to Messrs. Reynolds and Fairbanks. At the same time representatives of the Toronto Company



applied to me for a fit to take proceedings in my name to set aside the lease to Messrs. Reynolds and Fairbanks, which as a *bona fide* question of law seemed to be involved I granted, and that case is, as stated in the memorial, still outstanding.

The insertion of section 115 of chapter 1 of the Acts of 1892 had no reference whatever to this case, and only applies to it incidentally. In 1889 the government submitted to the legislature a measure which changed to a certain extent the incident connected with licenses to search and licenses to work, that is, licenses to work were abolished, and parties who held licenses to search were authorized or required to apply for a lease of the area if they desired to continue their mining right in it. When that Act was passed, a considerable number of persons held licenses to search, and it became a question whether the Act of 1889, chapter 23, was retroactive in its operation, that is, whether it took away from the holders of licenses to search their right to obtain licenses to work before applying for a lease. I was compelled to advise that it did not, and the department acted on this assumption in many cases. When the Mining Act was being consolidated at the last session, it was deemed desirable by the department of mines, that this matter should be settled beyond question, and the consequence was a legalizing Act was passed, affecting a considerable number of cases, and possibly incidentally affecting the case of the present memorialists, which was then before the court. But as the measure was a measure introduced and promoted by the government, I must distinctly disavow in the most explicit manner, any intention on the part of the government to prejudice by this Act any rights which any parties had in controversy before the courts. As I have stated incidentally, it may have affected Caley's case, but it was not intended specially to apply to his case, but to set at rest the titles of twenty other persons.

Whatever may have been the intention of the legislature, it may be frankly conceded that if the effect of a clause is to work injustice to any suitors before the courts, it is a fair question whether it should not be repealed. I have in this case, however, to bring to your notice the fact that there can by no possibility be merits in the application of the memorialists in this regard. When J. W. K. Johnstone applied and paid his money for a license to search, and this was acquired by Messrs. Reynolds and Fairbanks, they thereby obtained legal rights as clearly cognizable by the courts as the rights of the present memorialists could, irrespective of how much money any of the parties had expended. I can scarcely believe that the memorialists could seriously ask the Department of Justice to disallow an important public measure, because the effect of it would be to legalize a general principle, which was in itself sound, nor can I believe that the present memorialists would attempt to maintain that any interests would be subserved by their destroying the lease to Messrs. Reynolds and Fairbanks, on a ground so technical, as that perhaps the Act of 1889 had a retroactive operation, and while securing such a result, disturb the titles of twenty other persons. If there are any substantial grounds for setting aside the lease to Messrs. Reynolds and Fairbanks, in order that it may be granted to the memorialists, the courts of the country have the amplest and fullest power to deal with them.

To prevent misconception of the facts let me state that the fact that this Toronto company spent \$100,000 prior to 1886 has nothing whatever to do with the case. The Mines Act had to be framed to meet the public needs and to lay down principles applicable to all times and to all parties, and because a man had spent \$1,000,000 in developing a mining property, would form no ground for setting aside strict interpretation of the law, much as every person would be disposed to sympathize with parties, who by their negligence had lost valuable interests, we could not think of either setting aside or stretching the law to meet such cases.

If good reasons can be stated for repealing this Act it seems to me that no better and more reasonable course could have been taken by the memorialists than to apply to the government of Nova Scotia and set forth in detail their objections to it. Certainly the government of Nova Scotia is not interested in the remotest degree in any litigation taking place between the memorialists and Messrs. Reynolds and others, and I think it is reasonable to infer if a substantial case of injustice could be made out against the clause in question, that the government would be only too ready to introduce

legislation to modify or repeal it. I have to state, however, that no application to repeal said Act has been made by the memorialists to the government of Nova Scotia or to the best of my knowledge and information to any member thereof.

I have to add in conclusion that the clause in question is entirely and exclusively within the legislative competency of the parliament of Nova Scotia, and I must reiterate that it does not contravene any sound principle of legislation in giving a legalizing effect to a number of cases in which some doubt might possibly arise.

I have, &c.,

J. W. LONGLEY,

*Attorney General.*

*Telegram from Honourable Attorney General Longley to Deputy Minister of Justice.*

HALIFAX, N.S., 11th April, 1893.

Government will introduce bill *re* Cayley in form suggested, but its ultimate passage must depend upon result of full hearing of all parties before a committee of the House.

J. W. LONGLEY,

*Attorney General.*

*Honourable Attorney General Longley to Deputy Minister of Justice.*

HALIFAX, 11th April, 1893.

MY DEAR SIR,—I wired you this morning stating that in compliance with your suggestion the government would introduce a bill repealing section 115 of chapter 1 of the Acts of 1892, as far as it relates to pending suits. But as it is a matter involving private rights, and is one in which the government have a great deal of difficulty as to the real merits of the case, we propose to submit the bill to the committee on law amendments to hear evidence and the argument of counsel on the subject. Mr. Cayley's solicitors will have the fullest opportunity of presenting his case and the fate of the bill must depend upon the judgment of the House and Committee. I think that this ought to be satisfactory to Mr. Cayley and to the Department of Justice.

Yours very truly,

J. W. LONGLEY.

*Honourable Attorney General Longley to Deputy Minister of Justice.*

OTTAWA, 24th April, 1893.

DEAR SIR,—Referring to our previous correspondence with regard to the petition of Hugh Quentin Cayley and others, for the disallowance of chapter 1 of the Acts of Nova Scotia, 1892, and to the bill which at my suggestion you propose to introduce repealing section 115, so far as pending suits were concerned, I beg to say if the principle is to be admitted that legislation is improper which takes away the rights of suitors in pending litigation, it would seem to follow that such legislation could scarcely be justified because the legislature, after full hearing of both sides in committee, had refused to repeal it. The section complained of appears to come within the principle, and I trust that by enacting the proposed measure, the legislature may free this department from further consideration of the petition.

I am, &c.,

E. L. NEWCOMBE,

*Deputy Minister of Justice.*

*Telegram from Honourable Attorney General Longley to Deputy Minister of Justice.*

HALIFAX, N.S., 28th April, 1893.

Bill amending section 115 as you suggested passed both Houses and assented to to-day.

J. W. LONGLEY.

*Mr. S. Watson Owner to Honourable the Minister of Justice.*

LUNENBURG, 10th May, 1892.

SIR,—I desire to bring to your notice certain provisions of an Act passed by the legislature of Nova Scotia on the 30th day of April last, entitled."

"An Act to amend chapter 92, Acts of 1891, entitled, 'An Act to enable the Municipality of Lunenburg to borrow money for a Court-house,"

I forward herewith a copy of the *Royal Gazette*, newspaper, published at Halifax, by authority, of date May 4th, 1892, containing on page 227, a copy of the Act above referred to.

An examination of the 1st section of the Act, lines 8, 9, 10, &c., will show that the legislature has undertaken to legalize a past vote of the municipal council, notwithstanding the fact that the legality of that vote was, on the 30th day of April last, when the Act was passed, the subject of judicial deliberation in the Supreme Court of Canada, and is the principal issue in a still pending suit for an injunction against the municipality.

The facts of the case are, briefly, as follows:—

The municipal council of the municipality of Lunenburg, on the 7th day of May, 1891, passed a resolution to the effect that the new court-house and jail for the county of Lunenburg (authorized by chapter 92, Acts of 1891) be built at Bridgewater, in the county of Lunenburg, and appointed a building committee to carry out that resolution.

On the 8th day of June, 1891, acting under instructions from the town council of the town of Lunenburg, the shire town of the county from its earliest settlement, I caused proceedings to be taken in the Supreme Court of Nova Scotia to restrain the municipal council and the members of its building committee and the clerk-treasurer of the municipality from carrying out the resolutions of May 8th, 1891.

An interim restraining order was obtained from his Lordship Chief Justice McDonald on the 10th day of June, 1891, and on the 15th or 16th of July, 1891, the Supreme Court of Nova Scotia, sitting *in banco*, decided that the defendants be restrained from building a county court-house and jail at Bridgewater.

The defendants appealed from this decision. The appeal was argued before the Supreme Court at Ottawa in February last, and judgment was reserved till May 2nd, instant, when the Supreme Court dismissed the appeal.

In the meantime, on the 30th April last, two days before the judgment of the Supreme Court was delivered, the legislature of Nova Scotia passed the Act in question, the first section, and consequently, the whole of which interferes directly with rights which were at the time the subject of judicial deliberation in the highest court in the Dominion.

I may add that the manifest intention and effect of the Act is to forestall and reverse, in anticipation, the judgment which has since been delivered by the Supreme Court of Canada.

The facts above set out and additional facts relating to this subject are set out and verified in the printed case in the cause.



The warden and council of the municipality of Lunenburg, *et al.* Defendants Appellants and the Attorney General of Nova Scotia on the relation of S. Watson Oxner Plaintiff, Respondent.

I beg leave to submit, in view of the facts above mentioned, that the Act in question, as interfering with pending litigation, is contrary to sound public policy, contrary to those principles which ought to regulate legislation throughout the Dominion, and is an Act that ought to be disallowed by his Excellency the Governor General in Council.

I may add that the Act in question undertakes to give the municipality of Lunenburg, comprising about 22,000 of the population of the county, and paying less than two-thirds of the taxation, power to practically change the shire town of the county, without any representation or vote in the matter being conceded to the municipality of Chester, comprising about 6,000 of the population and paying about one tenth of the taxation of the county, or to the incorporated town of Lunenburg comprising about 3,000 of the population, and paying about one-fourth of the taxation of the county. The Act, chapter 92 of 1891, amended by the Act in question, requires Chester municipality and Lunenburg town to contribute in proportion to their assessments towards the cost of the court-house and jail proposed to be built.

If the municipality of Lunenburg requires or desires a municipal court-house at Bridgewater, legislation can easily be obtained for that purpose, and the disallowance of the Act now in question will not interfere with that object, but will prevent interference with the judgment of the Supreme Court of the Dominion and with the results of the injunction suit still pending, and will prevent the injustice of the municipality of Chester and the town of Lunenburg being required to pay more than one-third of the cost of buildings, the location of which is shifted from the shire town without their being consulted, and against the tenor of resolutions unanimously passed by their respective councils.

It may not be out of place for me to bring to your notice the fact that at least two other Acts interfering with pending litigation were passed by the legislature of Nova Scotia during its recent session, one relating to the well known case of Mayor Thomas, of Truro, and the other being an amendment of the Probate Act.

I have, &c.,

S. WATSON OXNER,

*Mayor, Town of Lunenburg.*

*Petition of Mr. David J. Thomas to His Excellency the Governor General in Council.*

*To His Excellency The Right Honourable Frederick Arthur Stanley, Governor General of the Dominion of Canada, &c.*

The petition of David I. Thomas of Truro, in the county of Colchester, and province of Nova Scotia, Esquire, humbly sheweth.

That I am mayor of Truro. That on Friday the 22nd day of April, 1892, I was arrested at Truro by Alfred F. Haliburton, serjeant-at-arms of the House of Assembly of Nova Scotia, Nicholas Power, of Halifax, city detective, and one Tanner of Halifax city aforesaid, under a warrant of Michael I. Power, Speaker of said House of Assembly, and conveyed to Halifax, and there kept in the custody of said officers at the Albion Hotel till Saturday evening at half past nine o'clock, when I was brought before the bar of the said House of Assembly at about fifteen minutes to twelve o'clock, midnight, and was sentenced by said House to be committed to the common jail at Halifax for forty-eight hours.

That about half an hour afterwards I was committed to the county jail at Halifax by the said officers, and was there imprisoned till Monday morning, when I applied to the Supreme Court, sitting in banco for a writ of *Habeas Corpus*.

That said writ was granted, and my application was fully argued, when I was unanimously discharged by said court, on the ground that said warrant was void.

That on the 27th day of April last, past, I commenced an action in the Supreme Court aforesaid to recover damages for said trespass, assault and imprisonment, against said serjeant-at-arms; Nicholas Power, the jailor, the Speaker of said assembly; and the several members who voted for the issue of the said warrant and my imprisonment as aforesaid.

That the said serjeant-at-arms, the said Nicholas Power, the jailor, the Speaker, and all the members of the said assembly, voting for the said arrest and commitment, saving three, were served on the 28th day of April last past with copies of the writ in said action.

That an Act of the local legislature, entitled "An Act to amend chapter 3, Revised Statutes, N.S., of the composition, powers and privileges of the House," was passed and assented to on the 30th day of April last, a copy of which your petitioner is informed has been transmitted in due course to the Secretary of State at Ottawa.

That said Act is a grave injustice to your petitioner in the following respects, among others, because it undertakes to validate trespasses professed to have been committed under unconstitutional clauses in chap. 3, Revised Statutes, N.S. Because the Act is based upon unconstitutional and *extra vires* foundations. Because it deprives me of vested rights. It deprives me of damages for injuries done me by said officers, by an *ex post facto* law. It confiscates and expropriates rights and property without indemnification. It subjects the plaintiff to costs in respect of the defendants, against whom the action already commenced has been taken away. It throws doubts upon the plaintiff's right to recover at all, inasmuch as the third section of said Act may create doubt as to the extent to which the remedy is taken away, since it may be argued that if said Act makes valid the warrant and proceedings, all the members voting for the issue of the warrant may justify under it.

If the contention as to the House constituting a court of record at the time said proceedings were taken, be entertained, then said Act might be extended by construction to protect all the members as officers of such court.

It is not an Act of indemnification as it professes to be, but one of spoliation. If it were an act of indemnification it would have provided that in case damages and costs were awarded against the defendants, and such costs and damages were not paid by the other defendants to the suit, such damages and costs should be made good to the said officers from the public revenues.

It is submitted that the proper form of indemnification would have been the personal bond of the members, who employed and authorized such officers to act under said warrant.

That said action will likely be for trial at the ensuing June term of the said Supreme Court which opens at Truro on the 7th day of June, 1892.

That your petitioner humbly prays that your Excellency may be pleased to disallow said Act. And your petitioner as in duty bound will ever pray, etc.

D. J. THOMAS.

TRURO, N.S., 6th May, 1892.

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 5th July, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1893.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon the following Acts of the legislature of the province of Nova Scotia, passed in the fifty-fifth year of Her Majesty's reign (1892), certified copies of which Acts were received by the Secretary of State on the fourth day of August, 1892.



Chap. 1.—“An Act to amend and consolidate the Act relating to Mines and Minerals.”

Chap. 2.—“An Act to amend an Act of the present session entitled an Act to amend and consolidate the Acts relating to Mines and Minerals.”

Chap. 3.—“An Act respecting the royalties on Coal.”

In a petition addressed to your Excellency in Council on behalf Hugh St. Quentin Cayley and others, the petitioners prayed that chapter 1 might be disallowed, because section 115 prejudiced their vested rights in litigation which was pending in the Supreme Court of Nova Scotia at the time the statute was passed. It appeared to the undersigned that the section in question might have the effect of which the petitioners complained, and he accordingly suggested to the Attorney General of Nova Scotia the justice of an amendment of repealing section 115, in so far as it might affect pending litigation. The Attorney General adopted this suggestion and introduced a bill which was passed and received assent at the recent session of the Nova Scotia legislature, which removes the ground of the petitioners.

A petition addressed to your Excellency in Council on behalf of the Mining Society of Nova Scotia, The General Mining Association, The Acadia Coal Company, limited, The International Coal Company, limited, The Cumberland Railway and Coal Company, limited, The Caledonia Coal and Railway Company, The Gowrie Coal Mining Company, limited, J. R. Cowans, Glace Bay Mining Company, limited, Intercolonial Coal Mining Company and Lingan Low Point and Barachois Coal Company, limited, prayed that chapters 1 and 3, might be disallowed upon the ground that section 117 of chapter 1 exacts from the petitioners, who are lessees of coal areas in Nova Scotia, a rate of royalty in excess of that which was by their leases guaranteed to them for a fixed period, which has not expired; that section 118 of chapter 1 interferes with the petitioners' rights in respect to the renewal of their leases, which, according to their claim, should, as a matter of contract, be renewed in the terms of the original leases, which original leases did not contain any provision that the royalties might be increased, diminished or otherwise changed by the legislature; also upon the ground that the increase of royalty complained of shall be held to have taken effect on the twenty-third day of February, 1892, the Act providing for such increase not having received assent until the 30th day of April, 1893, thus giving to it a retroactive operation. Several of the petitioners, namely, The Acadia Coal Company, The Cumberland Railway and Coal Company, limited, The Intercolonial Coal Company, limited, The Caledonia Coal and Railway Company, and the Gowrie Coal Mining Company, limited, have subsequently withdrawn from the petition. Such withdrawal does not, however, affect the case of the other petitioners.

Leaving aside for the moment the ground of objection based upon the retroactive effect of one of the sections complained of, it is to be observed that no objection to the legislation arises upon the face of these statutes, and, therefore, in the opinion of the undersigned, the onus of establishing that they operate unjustly or interfere with private interests, rests with the petitioners. By reference to the leases under which the petitioners claimed at the time these statutes were passed it appears that they each contained a provision very similar in terms, and quite possibly the same in effect, as that which is set forth in section 116, and it is not clear to the undersigned that the petitioners' leases, particularly in view of previous legislation, did not contemplate such revision of the royalty payable thereunder as is complained of.

With regard to the objection that section 117 has become retroactive by reason of section 1 of chapter 3, the Attorney General in the correspondence which is submitted herewith, points out that in view of the policy of readjusting the coal royalties which was determined upon by the government of Nova Scotia early in February, 1891, notices were sent to the petitioners with an intimation that the government would promote legislation at the then ensuing session of the legislature, fixing the rate of royalty on coal at ten cents per ton, and that provision is made by the Act for exempting from the new rate of royalty, coal sold pursuant to contracts which had been made or which were being negotiated at the time such notices were received by the petitioners. These facts, while they may not entirely justify the retroactive legislation, still to a considerable



degree detract from the effect which would otherwise belong to the objections raised upon this point by the petition. In view of these considerations and the grave consequences which would ensue, should Acts of such importance as those in question be disallowed, the undersigned cannot see his way clear to make any recommendation to that effect.

The attention of your Excellency has also been called to section 156 of chapter 1 with the objection that the powers thereby vested in the Governor in Council are more extensive than is consistent with the public interest, and that a lease containing exceptional provisions has already been granted by the Commissioner of Public Works and Mines under the authority thereby conferred. Inasmuch, however, as this section affects merely provincial interests, which are already under the control of the provincial legislature, and does not purport to prejudice private vested rights, the undersigned does not consider the objections raised as affording reason for the exercise of the power of disallowance. He, therefore, respectfully recommends that these Acts be left to their operation.

Chap. 42. "An Act to amend chapter 3, Revised Statutes, 'Of the Composition, Powers and Privileges of the Houses.'"

This Act after reciting that the Speaker of the House of Assembly under the authority of the House had issued his warrant directing that one David J. Thomas should be committed to jail for certain reasons in the warrant set forth, and that the said Thomas had been detained in custody in the county jail at Halifax, and had been discharged therefrom by an order of the Supreme Court, proceeded to enact that the speaker, the serjeant-at-arms and the keeper of the county jail should be exonerated from all liability to the said Thomas by reason of their action in the premises, and that such Act should be an absolute bar to any proceedings which they have taken or which might thereafter be brought by reason of Mr. Thomas's imprisonment.

In a petition to your Excellency, Mr. Thomas has prayed for the disallowance of the Act in question.

The undersigned is unable to recommend that Mr. Thomas's request should be granted. Legislation of the character in question is not unusual in those countries which have adopted parliamentary systems of government, and it would seem but reasonable that a legislature or a branch of legislature might properly promote legislation indemnifying its own officers from the consequence of acts done by its authority. The Act in question does not purport in any way to legalize the proceedings of which Mr. Thomas complains, except in regard to its own officers. It leaves him any remedy which he may have against those members of the House who voted for or were parties to his arrest and imprisonment.

For these reasons the undersigned recommends that the Act be left to its operation.

Chap. 112. "An Act to amend chapter 92, Acts of 1891, entitled 'An Act to enable the Municipality of Lunenburg to borrow for a court house.'"

This Act authorizes the erection of a court house and jail in any town or village within the county where a sitting of the Supreme Court or Country Court is held, and authorizes the purchase of land for the purpose. It also empowers the municipal council to purchase from the town of Lunenburg a building recently erected there for the purpose of holding court therein.

The disallowance of this Act has been asked for upon several grounds. It is one, however, which a provincial legislature has undoubtedly the right to pass, and the undersigned does not think that any sufficient reasons have been advanced to justify your Excellency in disallowing it, he therefore recommends that the same be left to its operation.

Respectfully submitted,

J. ALDRIC OUIMET,  
*Acting Minister of Justice.*

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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st July, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th May, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Nova Scotia in the fifty-fifth year of Her Majesty's reign (1892), the chapters and titles of which are contained in the annexed schedule—received by the Secretary of State for Canada on the fourth day of August, 1892 ; and he is of the opinion that they are unobjectionable and may be left to their operation.

Respectfully submitted,

J. ALDRIC OUMET,  
*Acting Minister of Justice.*

*Schedule.*

Chapters 4 to 41, 43 to 111, 113 to 188.

## NOVA SCOTIA, 56TH VICTORIA, 1893.

3RD SESSION, 30TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th February, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th January, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Nova Scotia in the 56th year of Her Majesty's reign (1893), the chapters of which are contained in the annexed schedule, received by the Secretary of State for Canada, and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts have been reserved for a separate report

The undersigned also recommends that if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor of the province for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Schedule.*

Chapters 1 to 16, 18 to 45, 47 to 51, 53 to 123, 125 to 140, 142, 144 to 154, 156 to 166, 168 to 174, 176 to 192, 194 to 216, 219, 221 to 223.

*Petition from Mr. Joseph Bingay to the Governor General re Chapter 46.*

*To His Excellency the Governor General of Canada in Council.*

The petition of the undersigned Jacob Bingay, of Yarmouth, in the county of Yarmouth, province of Nova Scotia, and Dominion of Canada, humbly sheweth—

That your petitioner is a shareholder in, and directors of, the Yarmouth and Annapolis Railway Company, formerly called the Western Counties Railway Company, and has for a number of years past owned one hundred and ninety shares in said company.

That the Western Counties Railway Company was incorporated by Act of the legislature of Nova Scotia, passed in the year 1870, being chapter 81 of the Acts of that year, for the purpose, among other things, of constructing and operating a railway from Yarmouth to Annapolis, and that between the years 1870 and 1887, the said Act of incorporation was at different times amended by other Acts of said legislature.

That by Acts of the parliament of the Dominion of Canada, passed in the year 1887, being chapters 25 and 77 of the Acts of Canada of that year, the Western Counties Railway and all lines of railway then or thereafter owned by the said company, were declared to be works for the general advantage of Canada, and it was also declared by said chapter 77, that all such railways should thereafter be subject to the legislative authority of the parliament of Canada.



That by Act of the said parliament of Canada, passed in the present year, chapter 63 of 1893, amongst other things, the name of the said company was changed from Western Counties Railway Company to Yarmouth and Annapolis Railway Company.

That an Act of the said legislature of Nova Scotia, passed in the present year, chapter 46 of 1893, an agreement bearing date the 31st day of January, A D. 1893, schedule B to said Act, between the Western Counties Railway Company and certain persons or companies called and referred to as the syndicate, was approved, ratified and confirmed, and declared to be valid and effectual and binding upon the said company.

That by Acts of the said legislature of Nova Scotia, passed in the present year 1893, chapter 141 of 1893, amended by chapter 143 of 1893, the Yarmouth and Annapolis Railway Company was empowered, upon being authorized so to do by a vote of the majority of its shareholders, at any general meeting or at any special meeting called for the purpose, to transfer by way of sale to the Windsor and Annapolis Railway Company, limited, the said the Yarmouth and Annapolis Railway, and all and singular the undertaking known as the Yarmouth and Annapolis Railway, formerly the Western Counties Railway, and all the property of the Yarmouth and Annapolis Railway Company, with all its lands, franchises, powers, rights, privileges, equipments, stations, plant, rolling stock and appurtenances.

That by order of the Governor in Council for the province of Nova Scotia, lately published in the *Royal Gazette* the said chapter 141, as amended by said chapter 143, has been brought into operation in accordance with the provisions of said chapter 143.

That for the purposes of this application, petitioner craves to refer to the said Dominion and provincial Acts, and the *Royal Gazette* hereinbefore mentioned.

That your petitioner as a shareholder in, and director of, the said company as aforesaid, is advised and verily believes that the said Acts of the legislature of Nova Scotia are *ultra vires* said legislature, and in contravention of the provisions of the British North America Act. And that the said order of the Governor in Council founded on said Acts and the publication thereof as aforesaid, are invalid and void.

That your petitioner, shareholder in and director of the said company as aforesaid, objects to and protests against the approval, ratification or confirmation of the said agreement, and to the sale and transfer of the said railway or property thereof, by or under the said Acts, or either of them, as any Act done, deeds or writings executed, or proceedings taken by the company under said Acts, or either of them, would be illegal, and would lead to complications in the affairs of the company and to extensive litigation.

That there is danger that such complications will occur, and such litigation be had, if the said provincial Acts should be sanctioned or be permitted to remain without disallowance.

That petitioner hereby begs leave to call your attention to the said Acts and to the fact that the same are *ultra vires*, and prays that the same may be disallowed.

And as in duty bound will ever pray, &c.

Dated at Yarmouth, N.S., August 19th, 1883. }  
SANDFORD H. PELTON,  
Solicitor for Petitioner.

JACOB BINGAY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th February, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th January, 1894.

To His Excellency the Governor General in Council :

The undersigned has the honour to report upon the following Acts passed by the legislature of the province of Nova Scotia in the 56th year of Her Majesty's reign (1893), received by the Secretary of State for Canada.

Chapter 17. "An Act to amend the Towns' Incorporation Act of 1888."

Power is given to the town council to make by-laws for the several purposes in the statute mentioned, and to establish penalties for the violation thereof.

Some of the powers of legislation thus delegated to the town council appear to relate to the subject of criminal law, as for instance the following :

Subsection 42. "The prevention and punishment of vice, drunkenness, immorality and indecency on the public streets, highways and other public places and prevention of profanation of Sunday."

Subsection 55. "For preventing the posting of indecent placards, writing or pictures, or the writing of indecent words or making indecent pictures or drawings on walls or fences in streets or in public places."

It appears to the undersigned, however, that there is scope for the exercise of the powers so conferred in matters within the legislative control of the province.

Chapter 46.—"An Act respecting the Yarmouth and Annapolis Railway Company."

Chapter 141.—"An Act to authorize the sale of the Yarmouth and Annapolis Railway, formerly the Western Counties Railway, in the province of Nova Scotia, to the Windsor and Annapolis Railway Company, limited."

Chapter 143.—"An Act to amend an Act of the present session, entitled: 'An Act to authorize the sale of the Yarmouth and Annapolis Railway (formerly the Western Counties Railway) in the province of Nova Scotia, to the Windsor and Annapolis Railway Company, limited.'"

Chapter 46 confirms an agreement of 31st January, 1893, between the company and certain firms therein referred to as the "syndicate," and provides for the release of the claims of the government of Nova Scotia upon certain debenture stock of the company now held by that government, and the transfer of such stock to the syndicate. It also provides for the cancellation of certain debenture stock of the company, and the payment of the claims of the municipalities of Digby and Annapolis.

Chapter 141 is intended to authorize the sale of the Yarmouth and Annapolis Railway to the Windsor and Annapolis Railway Company: and

Chapter 143 is an amendment of the latter Act.

A petition of Jacob Bingay of Yarmouth, addressed to your Excellency in Council, has been received by the undersigned. Mr. Bingay states that he is a shareholder and director of the company, and his petition prays for the disallowance of these statutes, mainly upon the ground that they are *ultra vires*, the railway having been declared a work for the general benefit of Canada.

The petition is hereto annexed and made a part of this report.

It is unnecessary to consider whether the provincial legislature had power to confirm the agreement set forth in the schedule to chapter 45, because by an Act of parliament, 56 Victoria, chapter 63, the same agreement has been duly ratified and confirmed, and declared to be valid and binding upon the parties. The remaining provisions of chapter 46 appear to relate chiefly to the payment of the claims of the government of Nova Scotia upon the debenture stock of the company and the release and cancellation of that stock.

The question whether such legislation is within the power of the provincial legislature, in view of the fact that the railway has been declared by parliament to be for the general advantage of Canada, is one which may conveniently be decided by the courts.

As to chapters 141 and 143, which purport to authorize the sale of the railway to the Windsor and Annapolis Railway Company, the undersigned considers it open to very serious doubt whether the provincial legislature has power to authorize such a transfer.

The undersigned is informed, however, that this doubt is shared by the officers of the respective companies concerned, and that it is not intended to carry into effect the proposed sale, until legislation authorizing it has been obtained from parliament.

The undersigned, under these circumstances, would not recommend the disallowance of these Acts or any of them.

Chapter 52.—"An Act to amend chapter 58 of the Acts of 1891, entitled: 'An Act to consolidate and amend the Acts relating to the city of Halifax.'"

Section 13 provides that "Every master or other person in charge of any vessel who brings into or leaves in said city any poor or indigent person, who shall or is likely to become chargeable to the city of Halifax, for his or her support, or any such master



or other person in charge of such vessel, or the agent or consignee of such vessel, who shall neglect or refuse to receive or put on board such vessel such poor and indigent person for the purpose of removing him or her from said city, shall be liable to a penalty not exceeding \$200, to be recovered before the stipendiary magistrate for the city, and in default of payment to be imprisoned in the city prison for a period not exceeding sixty days."

To the extent to which this provision is intended to relate to the subject of immigration it is, in the opinion of the undersigned, *ultra vires*. Several statutes have been passed by parliament in relation to the landing in Canada, and removal therefrom, of pauper and other immigrants likely, to become a public charge.

The undersigned is of opinion, however, that the provision in question may properly be left to such operation, as it may have with regard to matters within the legislative authority of the province, and not within that of parliament.

Chapter 155.—"An Act to incorporate the Annapolis and Granville Bridge and Harbour Improvement Company."

This Act recites that the construction of a bridge connecting the town of Annapolis Royal and the township of Granville, across the Annapolis River, at the town of Annapolis Royal and Granville Ferry, would be of great commercial advantage and provide largely increased facilities for traffic.

The company is incorporated for the purpose of constructing such a bridge, and the company is empowered to build a bridge of such dimensions and material as may be considered most suitable, and to erect piers and abutments and other structures as may be necessary, provided that the bridge shall have a suitable draw, sufficiently large to admit of vessels passing through the same in the navigation of the Annapolis River.

The undersigned observes that in so far as the Annapolis River is vested in the Dominion of Canada, under the British North America Act, the provincial legislature has not the power to authorize the company to erect the proposed works upon the river, and further that the river being navigable, it is not within the power of the provincial legislature to authorize the construction of any works upon it, which would impede or interfere with navigation, except to the extent to which such authority is intended to be subject to the legislation of the Dominion with regard to the construction of works in navigable waters. Inasmuch, however, as it may be lawful for the company to prosecute the proposed work upon obtaining the necessary authority from the Dominion, and complying with the requirements of chapter 92 of the Revised Statutes of Canada, the undersigned would not recommend the disallowance of the Act.

Chapter 167.—"An Act to Incorporate the Fisherman's Marine Insurance Company of Lunenburg, limited."

By this statute the company is incorporated for the purpose of carrying on the business of marine insurance. The undersigned observes that the powers conferred upon this company are not strictly limited to a provincial object. The company is given power to make insurance, not only upon any vessel owned and registered in Nova Scotia and engaged in the fishing business, but also upon any vessel engaged in the coasting trade including the freights of such vessels.

The expression "coasting trade" is not defined, and it would, in the opinion of the undersigned, be *ultra vires* of the provincial legislature to authorize a company to insure vessels not belonging to or engaged in the trade of the province.

The undersigned would recommend, therefore, that the attention of the government of Nova Scotia be called to the Act, with a view to such an amendment as may properly limit the powers of the company.

Chapter 175.—"An Act to incorporate the Stellarton Loan Association."

By section 9 it is provided that "the operations of the corporation shall be confined to receiving deposits of money from shareholders and others, and lending money under the terms and regulations to be established by the by-laws of the corporation; but such loans and deposits shall not at any one time exceed \$20,000."

Chapter 193.—"An Act to amend an Act to incorporate the Halifax Trust and Loan Society, limited."



Among the powers conferred upon this company are the following:—(b) “To act as the fiscal or transfer agent of any province, municipality, body politic or corporation; and in such capacity to receive and disburse money, and transfer, register and counter-sign certificates of stock, bonds or other evidences of indebtedness.” (c) “Received deposits of money, securities and other personal property from any person or corporation and to loan money on real or personal securities.” (h.) “To purchase, invest in and sell stock, bills of exchange, bonds and mortgages, and other securities; and when moneys, or securities for money, are borrowed or received on deposit or for investment, the bonds or obligations of the company may be given therefor, but nothing herein contained shall be construed as giving the right to issue bills to circulate as money.” (i.) “To carry on the business of warehousemen, and issue warehouse receipts, and make advances on the same.” (k.) “To draw bills of exchange, cheques, and promissory notes.” (l.) “To loan money on life and other insurance policies, holding the same as security, and to discount promissory notes, bills of exchange, or other evidence of indebtedness.” (m.) “To become the agent of bankers, foreign banks or corporations.” (n.) “To guarantee the payment of the principal or interest, or both, on bonds of the corporation or individuals.”

It is in the opinion of the undersigned, open to very serious question whether the provisions above referred to or some of them, do not relate to the subject of banks and banking rather than to any matter within the legislative control of the province. The question, however, is one which may be left to the determination of the courts.

Chap. 217.—“An Act to incorporate the Greenwood Cemetery Company.”

Chap. 218.—“An Act to incorporate the Lockeport Cemetery Company.”

Chap. 210.—“An Act to incorporate the Canso Cemetery Company of Canso Guysborough County.”

Each of these statutes contains a provision constituting it an offence, to wilfully destroy or injure any monument, tree or other property within the cemetery of the respective companies.

The undersigned calls attention to these provisions as possibly relating to the subject of criminal law, and not within the legislative control of the province.

The undersigned recommends that each of the statutes referred to in this report, be left to its operation, and that a copy of this report, if approved be transmitted to the Lieutenant-Governor of Nova Scotia.

Respectfully submitted,

JNO S. D. THOMPSON,  
*Minister of Justice.*

*Petition from Town of New Glasgow to the Governor General re Chapter 124.*

*To His Excellency the Governor General in Council:—*

The petition of the town of New Glasgow, in the county of Pictou, and province of Nova Scotia, humbly sheweth:

1. That it is a town of New Glasgow, in the county of Pictou, and province of Nova Scotia, humbly sheweth:

2. That in the year 1887 it constructed water-works under the authority of the legislature of Nova Scotia and has ever since owned and operated the same.

3. That the source of supply of water for the petitioner is the East River of Pictou and the petitioner's pumps and machinery are erected on the east side of said river at a point nearly opposite to the town of Stellarton.

4. That your petitioner on the 19th day of June, A.D. 1889, entered into a contract with Her Majesty the Queen represented by Sir John A. Macdonald, Acting Minister of Railways and Canals of Canada, under which said town agreed to provide and supply to the Intercolonial Railway from time to time and at all times during the

period of 10 years from the date of said agreement, all the water which might be required at New Glasgow and Stellarton for locomotive engines, engine houses, cars, stations, shops, yards, and other railway purposes, and the said minister agreed to pay to said town for whatever water might be required and supplied under said agreement, the sum of 6 cents for each 1,000 imperial gallons.

5. That under the said contract the said minister agreed to lay the pipe from the railway yard at Stellarton to the pumping-house of the petitioner on the said East River, and thereafter to maintain the half nearest said station in good repair; petitioner agreeing to keep the other half in repair.

6. That your petitioner appends hereto a copy of said contract.

7. That your petitioner in the said year 1889, duplicated its pumps and machinery and when so doing, in order to carry out said contract and others which it was negotiating for, was compelled to put in very much heavier and more costly machinery than it otherwise would have needed.

8. That your petitioner has received each year between five and six hundred dollars for water supplied under said contract.

9. That your petitioner on the 31st day of July, A. D. 1889, entered into a contract with the Acadia Coal Company doing business at Stellarton aforesaid, to supply water to it.

Your petitioner herewith presents a copy of said contract.

10. That your petitioner since the making of said contract has received between four and five hundred dollars each year for water supplied thereunder. The amount received varying slightly each year.

11. That your petitioner presents herewith a certified copy of an Act passed by the legislature of Nova Scotia entitled "An Act relating to the town of Stellarton," (chap. 124).

12. That your petitioner submits that said Act is *ultra vires* of the legislature of Nova Scotia for the following among other reasons:—(a.) It is an interference with a contract made by Her Majesty through a department of the government of Canada. (b.) It is an interference with property of the government of Canada. (c.) It is an interference with a railroad and its management, which belongs to the government of Canada. (d.) Because section 1 is an attempt to create a crime, and is an interference with trade. (e.) It makes the government of Canada liable to pay the town of Stellarton for water, without relieving it of responsibility to the town of New Glasgow, and without providing any compensation to the government of Canada for the loss it would thereby suffer. (f.) It is an invasion of the vested rights of your petitioner, the government of Canada and the Acadia Coal Company, and provides no compensation for the rights it destroys, and takes away from your petitioner and said government and said company.

Your petitioner therefore humbly pray that the said Act may be disallowed in toto. And your petitioner as in duty bound will ever pray.

New Glasgow, May 12th, 1893.

LESLIE JAMIESON,  
*Mayor, Town of New Glasgow.*

A. M. FRASER,  
*Town Clerk, Town of New Glasgow.*

*Deputy Minister of Justice to Hon. Attorney General Longley.*

OTTAWA, 29th May, 1893.

SIR,—A petition has come before this department asking for the disallowance of an Act of the Nova Scotia Legislature, passed at the recent session, relating to the towns of New Glasgow and Stellarton, and purporting to assign to the town of Stellarton a contract for the supply of water which is now outstanding between the Dominion Government and the town of New Glasgow.



I beg to inclosed herewith copies of the petition, the agreement referred to, and the Act in question, also copy of an agreement between the town of New Glasgow and the Acadia Coal Company, which accompanied the petition. As this statute appear to deal with public property of Canada, and the vested interests of the Crown, as represented by the government of Canada, and inasmuch as litigation appears to be already pending between the two municipalities in the Supreme Court of Nova Scotia with regard to the matter, the Acting Minister of Justice would be glad to hear a your earliest convenience what may be said to justify such legislation.

I have, &c.,

E. L. NEWCOMBE,  
*Deputy Minister of Justice.*

*Hon. Attorney General Longley to Deputy Minister of Justice.*

HALIFAX, 15th June, 1893.

DEAR SIR,—Upon receipt of the communication touching the application to disallow a certain Act passed at the last session of the legislature relating to the town of Stellarton, I handed over a copy of the memorial to the authorities of the town of Stellarton.

I have the honour to inclose the observations made on behalf of the town tending to put a more favourable complexion upon the facts of the case, and to afford an equitable justification for the legislation which was promoted by the town.

I do not feel that this is a case in which it is necessary for any special observations to be added by me. The matter is essentially one in which the two towns concerned are interested, and the government have no interest whatever in the legislation. Touching the point, however, which seeks to void the Act on account of its interfering with the contract between Her Majesty the Queen, represented by the Department of Railways and Canals, and the town of New Glasgow, I have to ask you to consider that the point is too broadly stated in the memorial asking for disallowance. As I interpret the fair meaning of the Act, it is simply that upon paying to the town of New Glasgow the amount it has expended in providing apparatus to supply the railway department with water, that the town of New Glasgow should assign its contracts, with all the benefits thereof, to the town of Stellarton. That looks to me as not in any way seeking to override the contract or to interfere in any way with the rights of the railway department. It simply means that a contract—presumably profitable—which one town has secured shall, upon certain considerations, be assigned to another town, which shall thereupon become entitled to the profits. This looks to me like an ordinary case of civil rights, and I do not think that the Acts would be subject to disallowance wholly upon that ground.

However, as I said, the matter is chiefly one of local interest. And with such remarks as I have already made I must ask you to accept the inclosed statement on behalf of the town in place of further observations from me.

Yours truly,

J. W. LONGLEY,  
*Attorney General.*

*Town of Stellarton to Hon. Attorney General Longley.*

TOWN OF STELLARTON, TOWN CLERK'S OFFICE, 13th June, 1893.

DEAR SIR,—In reply to your favour of the 5th instant covering copies of letter of the Deputy Minister of Justice to you of the date of May 29th and of petition from the town of New Glasgow, asking for the disallowance of the Act of last session of the Nova Scotia legislature relating to water arrangements between the towns of Stellarton and



New Glasgow, I have been instructed by the town council of Stellarton to make the following statement. Paragraphs 1, 2 and 3 of the petitions require no comment. As to paragraph 4 it may be stated that at the date of the alleged contract the question of incorporation was being agitated in Stellarton, and three months later the necessary preliminaries had been complied with to enable Stellarton to take advantages of the "Town Incorporation Act, 1888," the introduction of water for fire and domestic purposes was a potent argument in favour of incorporation and was extensively used in that connection.

New Glasgow undertook to supply water to the Intercolonial Railway in Stellarton without having obtained any legislative sanction for that purpose, although they deemed it wise to procure the authority of parliament before supplying water in the village of Trenton. It is clear that New Glasgow could not at that time have procured such legislation, as application had been made to the provincial government by Stellarton for incorporation, and the provincial government is always careful to protect the territory of an incorporated town from such invasion.

After the incorporation of Stellarton, negotiations were entered into by which Stellarton should be supplied with water, by New Glasgow, but owing to obnoxious stipulations insisted upon by New Glasgow they fell to the ground.

Stellarton then resolved to equip a water system of its own, and to borrow \$30,000 for that purpose, provided the legislature would pass an Act giving to Stellarton the exclusive right to supply water within the town limits, whenever the Stellarton system should be completed. This Act was duly passed (See chap. 122 of the Acts of Nova Scotia for 1892) and was agreed to by the New Glasgow representatives before the committee of the House.

The Act as will be seen contained a proviso that the actual outlay made by the town of New Glasgow should be paid by the town of Stellarton.

After the passing of the above Act attempts were made to arrange an amicable settlement of the amount to be paid to New Glasgow by Stellarton under the Act, but New Glasgow held out for some \$7,000 a preposterous claim, to which Stellarton could not in justice to itself accede, further legislation was then sought for by Stellarton, and the Act of 1893 was passed, after most strenuous opposition on the part of New Glasgow.

Acting upon legal advice, Stellarton disconnected the pipes of the Acadia Coal Company from the New Glasgow water system, and made a connection with the Stellarton system, and were about to do the same with the Dominion Government pipes when the town of New Glasgow procured a restraining order, to dissolve which a motion is now pending undecided. A motion has also been made and is also undecided, to prohibit the town of New Glasgow from supplying water in Stellarton.

As to paragraph 7 it is submitted that the statements therein made are false and misleading, as can be shown by the reports of the town of New Glasgow of 1889 and 1890, and by the recommendation of the engineer then in charge. As to paragraph 12 it is submitted that there was no intention on the part of the legislature of Nova Scotia to prejudicially affect any contract made by Her Majesty through a department of the government of Canada,

The legislation in question was aimed at New Glasgow solely and was intended to supplement the Act of 1892, which as has been before stated was agreed to by New Glasgow, which they are now endeavouring to repudiate.

It was assumed both by the legislature and by the Stellarton authorities that it would be a matter of indifference to the Dominion Government, whether their water came from the New Glasgow system or the Stellarton system, and in any case the Act in question is at the most but a technical interference with Dominion Government rights, and should not be disallowed on that account merely.

It would be inequitable for the government of Canada to throw its weight on the side of New Glasgow for the following reasons :

- (a) Because New Glasgow had in 1889 no authority to supply water in Stellarton.
- (b) Because New Glasgow concurred in the Act of 1892, and are now endeavouring to evade the effect of such concurrence.

(c) Because Stellarton barrowed \$30,000, floated its bonds and constructed the work upon the faith of New Glasgow's consent of 1892, and fully believing that upon the completion of their system all revenue accruing within the town limits would be available to meet interest on the bonds.

The Acadia Coal Company were consenting parties to the Act of 1893 and to the change of connection. So far as the interference with their contract was concerned it comes within section 92 of the British North America Act, subsection 8 and 13 and the act so far as the company is concerned is *intra vires* of the legislature of Nova Scotia.

Respectfully submitted,

DONALD GRAY,  
*Town Clerk.*

JAMES MITCHELL,  
*Mayor.*

*Deputy Minister of Justice to W. B. Ross, Q.C.*

OTTAWA, 4th April, 1894.

DEAR SIR,—Referring to the petition asking for the disallowance of chapter 122 of the Nova Scotia Acts of 1893, which you forwarded some time ago to this department, I would be glad if you would inform me whether the reasons urged for disallowance on behalf of your clients still hold good. I am informed by the Attorney General of Nova Scotia that an amending statute was passed at the last session of the legislature repealing those sections which affect the interest of the government of Canada, and I think that I also understood from you in conversation last fall that an amicable settlement had been arrived at or was likely to be reached between your clients and the town of Stellarton with regard to the matter.

I will be obliged, therefore, if you will inform me what the attitude of your clients now is.

Yours very truly,

E. L. NEWCOMBE.

*W. B. Ross, Q.C., to Deputy Minister of Justice.*

HALIFAX, N. S., 12th April, 1894.

SIR,—I have the honour of acknowledging the receipt of your letter of the 4th inst. I now beg to inclose a certified copy of the Act passed at the last session of the legislature of Nova Scotia, amending chapter 124 of the Acts of 1893, this latter being the one complained of by me as *ultra vires* of the legislature of Nova Scotia. I beg to call your attention to the fact that section one of chapter 124 has not been repealed or modified. I do not wish to urge the reasons with which you are already conversant. I submit that the Act should be disallowed as being *ultra vires*. I should state that the Act, a copy of which I am forwarding, was passed without any notice to and without the knowledge of me and of my clients, the town of New Glasgow. My clients are in no way a party to this amended legislation, and so far as they can see, think that this is a disingenuous attempt to avoid the objections already urged against chapter 124. No settlement has been reached between the two towns.

Yours very truly,

W. B. ROSS.



W. B. Ross, Q.C., to Deputy Minister of Justice.

HALIFAX, N.S., 21st August, 1893.

SIR,—I have the honour to acknowledge the receipt of your letter of June 21st last containing copies of a communication from the Attorney General of Nova Scotia and another from the town of Stellarton.

There is nothing in the letter of the Attorney General on which I desire to comment.

There are two points in the communication from Stellarton, to which I wish to refer.

1st. As to the consent of New Glasgow gave to the legislation of 1892.

(a) The legislation of 1892 is not under discussion.

(b) I inclose two statutory declarations of John MacGilvray and A. M. Fraser which negative any such consent.

2nd. With reference to New Glasgow supplying water outside its limits.

(a) New Glasgow pumps the water into pipes within its jurisdiction and does not act outside.

(b) The case of Pudsay Coal Company, against corporation of Bradford (L. R. 15 Equity 167) shows that Stellarton has no right to complain in any view of the facts.

(c) The railway department of Canada knows the facts about the supply of water to it by New Glasgow, and that before laying of the pipes at Stellarton that they had to go to the town of New Glasgow with their engines for water.

I have &c.,

W. B. ROSS.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 7th June, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st June, 1894,

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon chapter 124 of the Acts passed by the legislature of the province of Nova Scotia, in the fifty-sixth year of Her Majesty's reign (1893), received by the Secretary of State for Canada, as follows:—

Chapter 124.—“An Act relating to the Town of Stellarton.”

A petition on behalf of the town of New Glasgow has been received by the undersigned, addressed to your Excellency in Council, praying for the disallowance of this Act, upon the grounds set forth therein. Such petition with the correspondence relating thereto, is hereunto annexed and made part of this report.

The Act recites that by chapter 122 of the Acts of 1892 it was provided that when the town of Stellarton should have established a system of waterworks, and should be prepared to supply water within the town at a price not exceeding that which is paid for water supplied in the town under agreement with the town of New Glasgow, the town of Stellarton should have the exclusive right to supply water within the limits of the town of Stellarton, provided that the town of Stellarton should pay the actual outlay which the town of New Glasgow had made. The Act further recites that the town of Stellarton has established a system of waterworks, and is prepared to supply water within the town at a price not exceeding that paid for water supplied within the town under agreement with the town of New Glasgow, and that the town of Stellarton is prepared to pay the extra outlay actually made by the town of New Glasgow; and the Act provides that the town of Stellarton shall have the absolute and exclusive right to sell and supply water within the town of Stellarton; that it shall be unlawful for the town of New Glasgow to sell or furnish water to any person, firm, corporation, company, government or railway within the limits of the town of Stellarton; that all contracts existing between the town of New Glasgow and any person, firm, corporation,



company, government or railway for the supply of water within the town of Stellarton are thereby assigned to the town of Stellarton, and that the town of Stellarton shall be liable to, and shall fill such contract, and supply the water required thereby upon the same prices as previously charged by the town of New Glasgow under agreement with that town. It further authorizes the officers of the town of Stellarton to disconnect the pipes of the Intercolonial Railway or the government of Canada running into the town of Stellarton from the pumping station of the town of New Glasgow, and to connect its own pipes with the pipes of the Intercolonial Railway or government of Canada, and with the pipes of the Acadia Coal Company, limited; and lastly, the Act provides for the payment by the town of Stellarton to the town of New Glasgow of an amount representing the actual expenditure made by the town of New Glasgow in connection with the water supplied to the Intercolonial Railway and to the Acadia Coal Company in the town of Stellarton, such amount to be fixed by arbitrators chosen under the provision of the Act.

It appears that at the time this statute was passed there were two contracts in existence, one between the town of New Glasgow and Her Majesty the Queen, represented by the Minister of Railways and Canals of Canada, and the other between the town of New Glasgow and the Acadia Coal Company. The former contract bears date 19th of June, 1889, and the latter 31st of July, 1891, and these contracts provide for the supply of water by the town of New Glasgow for the period of ten years for the use of the Intercolonial Railway and the Acadia Coal Company, it being stipulated that the water should be supplied at the works of the railway and the company respectively, at Stellarton, by means of pipes laid from the pumping-house of the town of New Glasgow to the points of supply, the water to be paid for by measurement according to prices stated in the contract. The intention of the Act, therefore, appears to be to give to the town of Stellarton the benefit of these contracts, without the consent of any of the contracting parties and to authorize the town of Stellarton to disconnect the works of the Intercolonial Railway and the Acadia Coal Company from the water supply of the town of New Glasgow, and connect them with that of the town of Stellarton.

While, therefore, this statute would in its operation interfere with the vested rights acquired under the above mentioned contracts, the undersigned observes that provision is made for compensation to the town of New Glasgow for its actual expenditure in connection with these contracts, and further that the obligation is imposed upon the town of Stellarton of carrying out the provisions of the contracts so far as the other contracting parties are concerned.

It appeared to the undersigned, however, that the Act was *ultra vires* because it affected the public property of Canada, and was intended to interfere with the obligation of a contract to which the Crown, in the right of Canada, is a party, and to require the Crown to accept the obligation of the town of Stellarton to carry out the contract existing between Her Majesty and the town of New Glasgow.

The undersigned therefore caused these objections to be brought to the attention of the Attorney General of Nova Scotia in order that they might be removed by amendment, and the undersigned is now informed that by an Act of the Provincial Legislature which received assent on the 12th of February last, the statute in question has been amended so as to remove these provisions which relate to the public property of Canada and the contract of Her Majesty.

In view of such amendment the undersigned recommends that the power of disallowance be not exercised.

The undersigned further recommends that this report be approved, a copy of the same be sent to the Lieutenant-Governor of the province for his information.

Respectfully submitted,

J. S. D. THOMPSON,  
*Minister of Justice.*

## NOVA SCOTIA, 57TH VICTORIA, 1894.

4TH SESSION, 30TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 10th January, 1895.*

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Act passed by the legislature of the province of Nova Scotia, in the 57th year of Her Majesty's reign (1894), chapters 1 to 36, 38 to 115, 118 and 119 ; received by the Secretary of State for Canada on the 25th day of June, 1894 ; and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts, viz., chapters 37, 116 and 117, have been reserved for a separate report.

The undersigned also recommends that, if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor of Nova Scotia, for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 10th January, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th December, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report upon the following statutes of the province of Nova Scotia, passed in the fifty-seventh year of Her Majesty's reign (1894), and received by the Secretary of State for Canada on 25th day of June, 1895 :—

Chapter 37.—“An Act to consolidate the Acts relating to the Establishment and Operation of a Public Ferry between Dartmouth and Halifax.”

Section 20 provides that any person who shall deface or injure the property of the commission shall be liable to a fine or to imprisonment.

Chapter 116.—“An Act to incorporate the Central Falmouth Cemetery Co.”

Section 20 enacts that any person who shall wilfully destroy or injure any fence, gate or property of the company, shall be punished by a fine.

Chapter 117.—“An Act to incorporate St. Andrews Cemetery Company in New Gairloch in the county of Pictou.”

Section 18 contains a similar provision to that last referred to.

With regard to these several sections, the undersigned observes that the subject of malicious injury to property appertains to criminal law, and has been so dealt with under the Criminal Code. It is therefore beyond the power of the local legislature to constitute the malicious injury of property, either general or as regards a particular

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class of property, an offence, or to declare what shall be the punishment of such an offence. The undersigned does not consider, however, that any great harm can come from leaving these statutes to their operation, because the question as to the validity of these sections can be conveniently determined by the courts, should any necessity arise for invoking their jurisdiction.

The undersigned recommends that a copy of this report, if approved, be sent to the Lieutenant-Governor of the province of Nova Scotia for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*



## NOVA SCOTIA, 58TH VICTORIA, 1895.

(1ST SESSION, 31ST GENERAL ASSEMBLY.)

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 13th day of November, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th October, 1895.

*To His Excellency the Governor General in Council :—*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Nova Scotia, in the 58th year of Her Majesty's reign (1895), chapters 1 to 69, 71 to 94, 96 to 106, 109, 110, 112 to 116, 120 to 168, 170 to 172, received by the Secretary of State for Canada on the 11th day of September, 1895; and he is of the opinion that they are unobjectionable, and may be left to their operation.

The remaining Acts, chapters 70, 95, 107, 108, 111, 117, 118, 119 and 169 are the subject of a separate report.

The undersigned recommends that if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts be sent to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,

*Minister of Justice.**Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 13th day of November, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th October, 1895.

*To His Excellency the Governor General in Council :—*

The undersigned has the honour to submit his report upon the following statutes of the legislature of the province of Nova Scotia, passed in the 58th year of Her Majesty's reign (1895), assented to in March, 1895, and received by the Secretary of State for Canada on the 11th day of September, 1895.

Chapter 70.—“An Act to provide for supplying the town of Digby with water, and to enable the town to borrow money for such purpose.”

Under section 2, the town council is authorized to enter upon the bed of any river, lake or stream whatsoever in the county of Digby, and to build dams, reservoirs or other works wherever necessary, and to cause the water to overflow the land bordering on such river, lake or stream, and to take such quantities of water therefrom as may be required in the constructing, building or repairing of any dams or reservoirs.

Chapter 95.—“An Act to provide for supplying the Town of Westville with water.”

Similar powers are conferred upon the town council by section 2 of this Act.

The objections to which under "The British North America Act," such legislation is subject, and the limitations within which it may have effect, have been already several times called to the attention of your Excellency in Council by the undersigned, and his predecessor.

The question of provincial right to the waters mentioned in these sections involving the question of legislative authority with regard thereto, has been referred to the courts, and is at present awaiting determination. In the meantime it would appear that no inconvenience can result from leaving these Acts to their operation.

Chap. 107.—"An Act to incorporate the Halifax Electric Tramway Company (Limited)."

Chap. 108.—"An Act to incorporate the Halifax Auer Light Company (Limited)."

Chap. 111.—"An Act to incorporate the North Sydney Mining and Transportation Company (Limited)."

Chap. 117.—"An Act to incorporate the Longfellow Sanitarium Company (Limited)."

Chap. 118.—"An Act to incorporate the Dawson Construction Company (Limited)."

Chap. 119.—"An Act to incorporate the Greenfield Mining and Development Company (Limited)."

Each of these chapters contains a section stating in effect that aliens, whether resident in the province or elsewhere, may be shareholders, directors, or officers of the respective companies, and entitled equally with British subjects to all rights as such shareholders, directors or officers.

The undersigned observes that exclusive legislative authority with regard to aliens has been committed to parliament, and that the provision in question would appear to be beyond the competence of the provincial legislature.

Having regard, however, to the law of the province as it stands, and the fact that the courts might conveniently determine any question which might arise as to the capacity of aliens, the undersigned does not consider that it is necessary to do more than state the objection which he entertains to these enactments.

Chap. 169.—"An Act to incorporate the Middle LaHave Cemetery Co. (Limited)."

Section 18 provides that any person who shall wilfully destroy, injure or carry away any fence, monument, mound, embankment or other description of property therein mentioned, shall be punished by a fine of not less than four dollars, nor more than forty dollars, or may be committed to the common jail for a term not exceeding sixty days according to the nature of the offence.

This provision appears to relate to the subject of criminal law, and to establish penalties for an offence which is already punishable under the Dominion statutes. It is open to the courts, however, to give effect to this objection at the instance of any person who may be prejudiced by the enactment.

The undersigned therefore recommends that the several Acts referred to in this report be left to their operation and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

## NEW BRUNSWICK, 31ST VICTORIA, 1867-8.

(3RD SESSION—22ND GENERAL ASSEMBLY.)

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 4th of July, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th June, 1868.

With reference to the Imperial British North America Act, 1867, and also to the Order in Council of the 9th instant, on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report.

That he considers the Acts mentioned in the annexed schedule, passed by the legislature of the province of New Brunswick, in the first session thereof, to be free from objections of any kind. He, therefore, recommends that the same be respectively left to their operation.

JOHN A. MACDONALD,

## SCHEDULE.

Chapters 1 to 9, 11, 12, 14, 15, 17, 18, 19, 21 to 24, 27 to 30, 33 to 38, 40 to 53, 58 to 61, 63, 64, 67 to 72.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 12th September, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 7th September, 1868.

The undersigned has the honour to report that after full consideration he is of opinion that the following Acts, passed by the legislature of the province of New Brunswick at its last session, 31st Victoria, should be left to their operation.

31st Victoria, chapters 13, 16, 20, 26, 31, 32, 37, 39, 54, 55, 62, 65, 66.

The Acts chapters 39, 54, 55 will, of course, be subject to legislation by the parliament of Canada, relating to navigation.

All which is respectfully submitted.

JOHN A. MACDONALD.



*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th September, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th September, 1868.

The undersigned after full consideration has the honour to report that, in his opinion, the following Acts passed by the legislature of the province of New Brunswick at its last session, 31st Victoria, should be left to their operation :—

Chap. 10.—“An Act to authorize the Town of Woodstock to aid further in the construction of the Woodstock Railway, and to authorize the Woodstock Railway Company to give security therefor.”

Chap. 57.—“An Act to extend the time for building the Albert Railway.”

With respect to the latter Act the undersigned thinks it necessary to call the attention of your Excellency to the fact that the Albert Railway is one of those to which a subsidy was granted by the 27th Vic., chap. 3, of New Brunswick.

(See Statutes of New Brunswick, 32nd Victoria, chap. 57, 1869.)

This subsidy is a liability of the province for which, under the Union Act the Dominion must provide. It is, however, clear that only those liabilities that existed at the time of the union are to be met by the general government, and that the obligation to pay the subsidy cannot be extended by the provincial legislature, by any legislation since that time.

The attention of the provincial government should be called to this, so that they may, should they deem it expedient, submit a measure to the provincial legislature granting a subsidy to the railway, if commenced and completed under the Act in question.

JOHN A. MACDONALD.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th September, 1868.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th September, 1868.

In reference to the following Acts passed by the legislature of the province of New Brunswick at its last session, 31st Victoria, the undersigned has the honour to report as follows :—

Chap. 25.—“An Act to exempt the homesteads of families from levy or sale on execution.”

The 9th section of this Act is objectionable, inasmuch as it declares that a fraudulent violation of an oath taken by an appraiser shall be a felony, punishable as for wilful and corrupt perjury.

(The 9th section of this Act repealed by statute of New Brunswick, 32nd Victoria, chap. 18, 1869.)

This is legislation respecting the criminal law, which appertains solely to the parliament of the Dominion, and the undersigned recommends that the attention of the government of New Brunswick be called to the clause, suggesting that it should be repealed next session, and no action be taken upon it meanwhile.

Chap. 56.—“An Act relating to the Central Bank of New Brunswick.”

This Act appears to be objectionable, inasmuch as it relates to banking and the issue of paper money, and should have emanated from the general parliament. The attention of the provincial government is invited to this Act.

(Repealed by statute of New Brunswick, 32nd Victoria, chap. 27, 1869.)

All which, &c.

JOHN A. MACDONALD.

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*Memorandum re Reserved Bill.*

On the despatch of the Lieutenant-Governor of New Brunswick, 1st of April, 1868, transmitting an Act relating to presentation to parishes in the city and county of St. John, and county of Westmoreland, in the province of New Brunswick, which had been reserved for the assent of the Governor General, the Minister of Justice reported on the 19th of July, 1869 as follows :

“ This Act having been largely petitioned against by the clergy and laity of the Church of England in New Brunswick, it has been thought advisable to allow the year to expire within which a reserved bill must be assented to, if assented to at all. That year has expired and the Acts falls to the ground. The legislature of New Brunswick has since passed a General Act relating to presentations to rectories, 32 Vic., chap. 6, 1869.

The despatch containing the reserved Act in question, together with all the petitions against it should be returned to the Secretary of State for the provinces, to be put on file there,

JOHN A. MACDONALD.

## NEW BRUNSWICK, 32ND VICTORIA, 1869.

(4TH SESSION—22ND GENERAL ASSEMBLY.)

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 17th August, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 12th August, 1869.

With reference to the Imperial British North America Act, 1867, and also to the Order in Council of the 9th June, 1868, on the memorandum of the undersigned, relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report :

That he considers the Acts mentioned in the annexed schedule, passed by the legislature of the province of New Brunswick in the fourth session of the twenty-second general assembly thereof (being the second session since the passing of the British North America Act, 1867) to be free from objection of any kind. He, therefore, recommends that the same be left to their operation.

## SCHEDULE.

Chapters 1, 2, 4, 7, 8, 10, 12, 13, 14, 16 to 33, 35 to 53, 55 to 68, 70 to 79, 81 to 85, 87 to 91.

JOHN A. MACDONALD.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 20th August, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th August, 1869.

The undersigned, to whom was referred the bill reserved by the Lieutenant-Governor of New Brunswick, on the 21st of April, 1869, intituled :

"A bill relating to the appointment of Justices of the Peace in the several Counties of the Province," chap. 92, of Acts of 1870, begs leave to report :

That he has carefully considered the provisions of the said bill, and that he is of opinion that it is within the jurisdiction of the legislature of New Brunswick, and that it is unobjectionable. He, therefore, recommends that your Excellency do give your assent thereto.

All which is respectfully submitted.

JOHN A. MACDONALD.

*Order in Council giving assent to the Act above mentioned published, in Canada Gazette on the 4th day of December, 1869. Vol. III., No. 23, page 386.*



*Petition of certain Inhabitants of the City of St. John.*

*To His Excellency the Right Hon. Sir John Young, Baronet, K.C.B.. K.C.M.G., &c., &c., Governor General of the Dominion of Canada, &c., &c.*

The petition of the undersigned humbly sheweth :

That the European and North American Railway, for extension from St. John westward, was incorporated by Act of the General Assembly of the province of New Brunswick, in the year 1864.

That the requirement of the Act incorporating the said company not having been violated, your petitioners claim that they were released and discharged from all liability, and in consequence, refused to pay the assessments made, from time to time, upon the stock of the said company.

That the directors of the said company being advised that the payment of the said subscriptions could not be enforced by process of law, made application to the local legislature of this province, at its last session, for an Act to legalize their proceedings, and enable them to enforce payment of such subscriptions.

That a rule of both Houses of the legislature requires that notices of bills intended to be brought before the House, should be first published, a copy of which rule is hereto attached, "A."

That the 26th rule of the House, published in the *Royal Gazette* of this province, states that no bill of a private nature shall be received by the House after the fourteenth day from the opening of the session, both inclusive.

That the House met on the 4th March last, and in defiance and contradiction of this rule, the Act before referred to, and hereto annexed, was introduced on the 30th March last.

That the said Act was, in its nature, both local and private, and was in amendment of a former Act.

That no notice of any description was ever published, as required by the said rule of the said legislature, and the first intimation your petitioners had of the existence of the said Act, was a telegraphic despatch in the *St. John evening Globe*, of the 19th April, inst., stating that "a bill to compel subscribers to stock in the European and North American Railway to pay up" had passed both branches of the legislature.

That your petitioners believe that the application for such bill was never sanctioned at any meeting of the stockholders of the said company, nor was there any meeting of stockholders called to consider the subject.

That said bill was introduced in the House of Assembly by Mr. Needham, member for York County, on the 30th March inst., and then read ; that the second reading was on the following day ; and on the 1st April, inst., it was referred to a committee composed of Mr. Needham, Mr. Hibbard, member for Charlotte, and Mr. Flewelling, member for King's County.

That the said bill passed both Houses of the legislature on the 17th of April instant.

That your petitioners have procured from the clerk of the House of Assembly, a copy of the said bill, which is hereunto annexed, and to which your petitioners beg to refer your Excellency.

Your petitioners believe that if the said bill become law, a most dangerous precedent of *ex post facto* legislation will be established, and your petitioners will be deprived of their rights without a hearing.

That if your petitioners had received any notice of the said bill, or been aware that the same was before the House of Assembly, they would have opposed it most strenuously.

Your petitioners therefore humbly pray that your Excellency will disallow the said bill, which your petitioners regard as unconstitutional and unjust, and as an invasion of private rights, and as an attempt on the part of the said directors of the said company to deprive them of their legal rights.

And your petitioners, as in duty bound, will ever pray.

GEO. CARVILLE, J.P.,  
Z. RING, J.P., and 12 others.

*Petition of Millowners, &c., on West Musquash River.*

*To His Excellency the Right Honourable Sir John Young, Baronet, G.C.B., G.C.M.G. &c., &c., &c., Governor General of the Dominion of Canada.*

The petition of certain millowners and owners and lessees, and licensees of land on the West Musquash River, in the parish of Lancaster, in the city and county of Saint John, and province of New Brunswick, humbly sheweth :

That by the first section of an Act passed at the last session of the legislature of New Brunswick, intituled : " An Act to incorporate the Musquash River Stream Driving Company," one Charles F. Clinch, and one Samuel R. Clinch, were created a corporation " for the purpose of clearing out and building dams on the West Musquash River, from the mill at the head of tide-water, in the parish of Lancaster, on the said river, to the headwaters of the same, including all its branches, to facilitate the driving of logs and timber thereon."

That by the second section of said Act, the said Charles F. Clinch and Samuel R. Clinch " have powers to enter in and occupy for that purpose, any lands bordering on said river, its lakes or any of its branches within the limits before defined, as shall be necessary for constructing sluices, building dams and making other improvements which may be required to facilitate the driving of logs and timber thereon, doing no unnecessary damage thereto; and the said Charles F. Clinch and Samuel R. Clinch shall be liable for all damages sustained by the taking of any land necessary to be taken and used for the purposes of the said Act, or for any damage arising from the operations under the said Act.

That by the third section of the said Act, the said Charles F. Clinch and Samuel R. Clinch, are " authorized to demand and receive tolls of and from all persons, owners of logs, timber and other lumber passing along said river, as follows : For every thousand superficial feet of logs, timber and other lumber passing through the dam, to be built at Log Falls, twenty-five cents; for every thousand feet of logs, timber and other lumber passing through the dam, and other improvements at and on the outlet of Sherwood Lake, fifty cents; for every thousand superficial feet of logs, timber and other lumber passing through the dam, to be built on Queen's Lake stream near its outlet, at the head of Sherwood Lake, seventy-five cents, and proportionate rates for every other dam that may be built by the said Charles F. Clinch and Samuel R. Clinch, and deemed absolutely necessary for the purpose of driving logs on the said river or any of its branches."

That by the fourth section of the said Act, the said Charles F. Clinch and Samuel R. Clinch " shall have a lien on all logs and timber passing through such portion of the river as may be improved under the provisions of the said Act, for the payment of all tolls assessed; and in case of refusal or neglect to pay, so much of said logs or timber of each owner thereof so neglecting or refusing, as may be necessary to meet such assessment with the expenses, may be sold by the said Charles F. Clinch and Samuel R. Clinch, to pay the same, after having given ten days' notice thereof, and the surplus, if any, to be returned to the party."

That by the fifth section of the said Act it is provided that, " in case the said Charles F. Clinch and Samuel R. Clinch, shall fail to expend within one year from the passing of the said Act for the purpose of improving the said river or its branches, a sum not less than three thousand dollars, then the said Act to become null and void."

That by a joint rule of both branches of the legislature, adopted at the session of 1864, it is provided : " That no bill of a private or local nature, or bill making amendments of a like nature to any former Act, shall be received by the House, unless a notice specifying the several objects desired to be obtained has been published four successive weeks previous to the meeting of the legislature, or to the introduction of the bill, in some one of the newspapers published in the city or county interested in the measure, or in the locality where the parties affected reside, and when no newspaper is published in either of the localities, then in some newspaper published in the nearest adjoining county, or in the *Royal Gazette*," as may be seen by reference to a copy of the *Royal Gazette* of New Brunswick.



That the said bill was introduced into the House of Assembly of the province of New Brunswick, on the 27th day of March last, when the rule prepared by the said joint committee, requiring bills of a private or local nature to be published in some newspaper was suspended, for the purpose of the said bill, as may be seen by reference to the Journals of the House of Assembly, page 82.

That your petitioners being millowners or lessees or licensees of land on the West Musquash River, in the said parish of Lancaster, are seriously affected by the said Act, yet they were wholly ignorant of any intention to introduce the same, or of the nature of it, the necessary publication never having been made, and were therefore prevented from petitioning against the passage of the said bill.

That your petitioners object to the provisions of the said Act, because that it gives to the Messrs. Clinch, an entire monopoly of the lumbering upon the said river, and renders the mill property and timber lands of your petitioners quite valueless.

That the tolls fixed in and by the said Act are ruinously high.

That logs are now, and have long been driven from the Sherwood Lake to the head of tide-water, for the sum of twenty-five cents per thousand superficial feet, while by the Act in question the Messrs. Clinch are empowered to exact a toll of twenty-five cents per thousand feet on all lumber passing Logs Falls, situate between Sherwood Lake and the head of tide-water, and a further toll of fifty cents per thousand feet on all lumber passing through the dam at the Sherwood Lake making in all seventy-five cents per thousand feet, thereby increasing the cost of driving log from Sherwood Lake fourfold, or in other words, from twenty-five cents to one dollar per thousand feet.

That the tolls on logs driven from Queen's Lake to the head of tide-water will under the Act, amount to one dollar and fifty cents, an amount, in itself, double the cost of driving logs at the present time from Queen's Lake to tidewater.

That in addition to the above rates of toll, the Messrs. Clinch are authorized to charge proportionate rates for every other dam that may be built by them.

That the river below Sherwood Lake has been driven for more than forty years and that Sherwood Lake has been driven from for twenty years.

That Justus E. Knight, one of your petitioners, has driven down the said river from two to three millions feet of lumber annually for the past nine years.

That while the Messrs. Clinch are required to expend, in improvements, the sum of three thousand dollars, the receipts from tolls under said Act will be enormous.

That within two years, four million feet of lumber can come into the said river below Sherwood Lake which, at twenty-five cents per thousand feet, will yield one thousand dollars.

That within the same period eight million feet of lumber can come into the said river from Sherwood Lake which, at fifty cents toll at Sherwood Lake and twenty-five cents toll at Log Falls, will yield six thousand dollars.

That the country above Sherwood Lake is an extensive country, capable of yielding, during the time that the proposed improvements must last, say ten years, from twenty to thirty million feet of lumber, which, basing the calculation upon the lowest estimate would yield thirty thousand dollars, and this amount is liable to be largely increased by the tolls in respect of such other dams as the Messrs. Clinch may deem it necessary to build.

That the said Act, besides authorizing imposition of extravagant and ruinous tolls, does not provide proper safeguards for the efficient maintenance, by the Messrs. Clinch, of the dams which they are empowered to make, while it gives them full powers over the land and milling rights of your petitioners.

That Justus E. Knight, one of your petitioners, has just erected a large mill on the river below the head of tide-water, with the expectation of getting a supply of lumber out of the said river upon fair and equal terms with others, which mill will be rendered almost wholly, if not entirely, valueless if the said Act be not disallowed.

That the rest of your petitioners are either interested in mills on the east and west branches of the Musquash River, dependent for their supply of lumber upon the said Musquash, West Branch, in whole, or in part, as owners, lessees or licensees of lands



on the said West Musquash, whose rights must be largely derogated from, if the said Act be not disallowed.

Your petitioners, therefore, humbly pray that your Excellency will be pleased to disallow the said Act of the legislature of the province of New Brunswick, intituled: "An Act to incorporate the Musquash River Stream Driving Company."

And, as in duty bound, will ever pray, &c.

JUSTUS E. KNIGHT,  
JAMES DONNOLLY,  
ROBERT DONNOLLY,

FRANCIS WOODS,  
ADAM WOODS,  
JOHN ARMSTRONG.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 9th November, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th November, 1869.

The undersigned has the honour to report that after full consideration, he is of opinion that the following Acts passed by the legislature of the province of New Brunswick in the fourth session of the twenty-second General Assembly thereof (being the second session since the passing of the British North America Act, 1867,) should, in addition to those mentioned in his report of the 12th August last, be left to their operation, viz. :—

Chapter 6, intituled: "An Act relating to presentations to Rectories of the Church of England in the Province of New Brunswick."

Chapter 9, intituled: "An Act relating to Lunacy."

Chapter 11, intituled: "An Act to repeal sec. 29 of part 1, title 4, cap. 40, of the Revised Statutes of the Post Office."

Chapter 15, intituled: "An Act to repeal cap. 39, title 3, of the Revised Statutes, intituled: 'of Desertion from Her Majesty's Forces.'"

Chapter 34, "An Act to alter and amend the Act 18th Vic. ap. 24, intituled: 'An Act relating to Jurors.'"

Chapter 54, intituled: "An Act to amend an Act intituled: 'An Act to incorporate the European and North American Railway Company, for extension from St. John, westward.'"

Chapter 69, intituled: "An Act to amend the Law relating to the weight of Oats."

Chapter 80, intituled: "An Act to protect Butter and Cheese Manufacturers."

Chapter 76, intituled: "An Act to incorporate the Musquash River Stream Driving Company."

Chapter 3, intituled: "An Act in amendment of the Act of Assembly, 24 Vic., chap. 30, relating to the Police Force in the City of St. John,"

The undersigned, whilst recommending that the last mentioned Act be left to its operation, it being a beneficial one, would, at the same time, desire to call the attention of the government of New Brunswick to its terms, in order that they may consider whether it may not be held by the courts to be a measure affecting criminal procedure, in which case it would be beyond the jurisdiction of the provincial legislature by the terms of the "British North America Act, 1867, section 91, paragraph 27.

He would also beg leave to point out that there seems to be a necessity for an amendment of the Act in so far as the words "guilty under" are concerned; as it stands, a party is declared guilty without charge, trial or hearing. If the words are to be construed as "guilty after conviction" the provision would seem to be nugatory.

All which is respectfully submitted.

JOHN A. MACDONALD.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 30th November, 1869.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th November 1869.

The undersigned has the honour to report to your Excellency that a bill relating to marriage licenses (chap. 93 of Acts of 1870), was passed by the Legislative Council and Assembly of the province of New Brunswick during its last session, and reserved by the Lieutenant-Governor for your Excellency's assent. The Act is as follows:—

"Be it enacted by the Lieutenant-Governor, Legislative Council and Assembly, as follows:—

"1. That all marriage licenses issued and signed by any lieutenant-governor or administrator of the government of this province since the first day of May, one thousand eight hundred and fifty-four, by virtue of his office, and all marriage licenses signed by any deputy governor since the first day of July, one thousand eight hundred and sixty-seven, shall be deemed as valid and effectual as though he had been specially authorized by Act of the legislature of this province to sign the same.

"2. That from and after the passing of this Act, all marriage licenses shall be issued from the office of the Provincial Secretary, under the hand and seal of the Lieutenant-Governor, or of the person administering the government of this province for the time being."

This bill raises the question which has been already mooted in the other provinces of the Dominion, as to where the authority to issue marriage licenses since the British North America Act, 1867, came into force, rests. Up to that time the power was vested in the governors of the several provinces, as ordinary.

*(See Stokes on Colonies, pages 149 and 184.)*

Express power to issue marriage licenses seems to have been given in every commission of every governor general of Canada, or in the instructions accompanying such commission.

In the instructions addressed to the Hon. James Murray, as captain general and governor in chief of the province of Quebec, dated 7th December, 1763, (the first governor after the conquest,) it is provided, in the 27th paragraph, as follows:—

"And, to the end that the exclusive jurisdiction of the Lord Bishop of London may take place in our province, under your government, as far as conveniently may be, we do think fit that you do give all countenance and encouragement to the marriage, and probate of wills, which we have reserved to our governor and our commander in chief of our said province for the time being."

All subsequent commissions or instructions seem to contain the same power.

By the Marriage Act in Upper Canada, Con. Stat. of U. C., cap. 72, it is enacted that no clergyman shall celebrate marriage unless duly authorized so to do by license under the hand and seal of the governor, or by the publication of banns.

In Lower Canada no express power was given to the governor by statute, but in the Act relating to the registration of marriages, Con. Stat. Lower Canada, cap. 20, it is provided that "in the entry of a marriage in the registry, it shall, among other things, be specified whether the parties were married after the publication of banns, or by dispensation or license.

In the Revised Statutes of Nova Scotia, cap. 120, it is provided that "no person shall officiate in the solemnization of marriage unless on public notice or on license, and that the governor may, from time to time, sign and seal marriage licenses and deposit the same with the provincial secretary, &c."

In the Revised Statutes of New Brunswick, cap. 106, it is provided, that "Christian ministers may solemnize marriage by license or by publication of banns, and the Governor in Council may appoint persons in every county to issue marriage licenses."



The undersigned is of opinion that none of these statutes can be held as conferring any new power upon the governors; but that marriage licenses were issued by them by virtue of their commissions and as ordinary, having jurisdiction as such directly for the Crown.

By the British North America Act, 1867, exclusive power of legislation as to "marriage and divorce" is given to the Parliament of the Dominion by sec. 91, paragraph 26; and by sec. 92, paragraph 12, the legislatures of the provinces have exclusive powers of legislation respecting the "solemnization of marriage."

The commission of Lord Monck, the first governor general of the Dominion, in its 7th paragraph, empowers him to exercise all such power as the Queen may be entitled to exercise within the Dominion, in respect of granting licenses for marriages, &c., and the same power is contained in the commission to your Excellency.

Two questions now arise, viz.:

1. Whether the authority to issue marriage licenses is vested in your Excellency as governor General, under Her Majesty's commission, or in the lieutenant governors of the several provinces.

2. Whether the power of legislation respecting the publication of banns, or the issue of licenses, rests with the general or local legislatures.

As to the first point the undersigned is of opinion that the power rests with the governor general, under his commission, and not with lieutenant-governors. They do not hold their appointment directly from the Queen, but are appointed by the Governor General in Council pursuant to the 58th section of the Act. Their powers are simply those conferred upon them by the statute, and they have no right to deal with matters of prerogative as representatives of the sovereign.

The second question as to where the power of legislation on the subject rests, has excited much interest in Canada, and conflicting opinions exist with respect to it.

The power given to the local legislature to legislate on the solemnization of marriage was, it is understood, inserted in the Act at the instance of the representatives of Lower Canada, who, as Roman Catholics desired to guard against the passage of an Act legalizing civil marriage without the intervention of a clergyman, and the performance of the religious rite. They therefore desired that the legislature of each province should deal with this portion of the law of marriage. The Act must, however, of course, be construed according to its terms, and not according to the assumed intention of its framers.

The undersigned is of opinion that the right to legislate respecting the authority to marry, whether by publication of banns, by license or by episcopal dispensation, is part of the general law of marriage, respecting which the Parliament of Canada has exclusive jurisdiction.

The publication of banns or the license (as the case may be) is no part of the solemnization, it is merely the authority to solemnize. The solemnization is not commenced by the issue of the license or the publication of the banns; all the English Marriage Acts treat the authority, and the solemnization under the authority, as quite different matters. Thus, it is provided in the 4th Geo. IV., chap. 76, sections 9 and 19, that, "whenever a marriage shall not be had within three months after the publication of banns, or the granting of licence, no minister shall *proceed* to the solemnization of such marriage until a new license shall have been obtained, or a new publication of banns had," and by the 21st section the solemnization of marriage without due publication of banns or license of marriage, is made a felony.

In order to convict a person under this clause, it must be alleged and proved that the solemnization was not only commenced but completed; and if the license or banns were a necessary portion of the solemnization, the offence would never be completed without them. The subsequent Marriage Acts seem to draw the same distinction between the authority and the solemnization.

The undersigned is, therefore, of opinion that this reserved Act is beyond the jurisdiction of the local legislature, and should not receive the assent of your Excellency.



As the subject is one of the very greatest importance, affecting the validity of marriages past and future, the undersigned would suggest that the colonial minister be requested to submit the two questions above raised, to the law officers of the Crown for their opinion.

JOHN A. MACDONALD.

*Sir John Young to Earl Granville.*

OTTAWA, 2nd December, 1869.

MY LORD,—I have the honour to forward herewith a copy of an approved Minute of Council, founded on a report of the Minister of Justice, on a bill passed by the legislature of the province of New Brunswick, providing for the issue of marriage licenses by the Lieutenant-Governor of that province, and reserved by him for my assent.

2. Your Lordship will perceive that the Minister of Justice is of opinion that the Act is beyond the jurisdiction of the local legislature, but that the subject is one of such importance that he requests that it may be submitted to the law officers of the Crown for their opinion.

I have, &c.

JOHN YOUNG.

*Sir John Young to Earl Granville.*

OTTAWA, 5th December, 1869.

MY LORD,—I would beg to draw your attention to my despatch, No. 141, of date 2nd December, with reference to a bill passed by the legislature of New Brunswick providing for the issue of marriage licenses.

2. Since writing that despatch, I have received the following memorandum from Sir John Macdonald, the Minister of Justice and Premier, pointing out the importance of an early decision on the question.

He writes, "until the question is settled where the power of legislation exists, considerable disquiet will remain in the public mind. It is understood that the Court of Chancery in Ontario are prepared to give judgment in a suit before them, which will have the effect of invalidating a good many marriages. The court has hitherto refrained from giving the judgment, in order to give an opportunity for legislation."

Will your kindly press upon the colonial minister the importance of an early answer.

I have, &c.,

JOHN YOUNG.

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 15th January, 1870.

SIR,—With reference to your despatch, No. 141, of the 2nd December, I have to inform you that the despatch and the report of the Committee of the hon. the Privy Council, together with the memorandum from the hon. the Minister of Justice, relative to a bill passed by the legislative council and assembly of the province of New

Brunswick, providing for the issue of marriage licenses by the Lieutenant-Governor of that province, were, according to your request, submitted by me to the law officers of the Crown for their opinion upon the two questions raised by Sir John Macdonald in his memorandum.

The law officers are disposed to concur with the minister in his view of the first question stated by him, but they are unable to concur in his opinion that the authority to grant marriage licenses is now vested in the Governor General of Canada, and that the power of legislating on the subject of marriage licenses is solely in the Parliament of the Dominion.

It appears to them that the power of legislating upon this subject is conferred on the provincial legislatures by 30 and 31 Vic., chap. 3, sec. 92, under the words "the solemnization of marriage in the province;" the phrase "the laws respecting the solemnization of marriages in England" occurs in the preamble of the Marriage Act (4th Geo. IV., c. 76), an Act which is very largely concerned with matters relating to banns and licenses, and this is, therefore, a strong authority to show that the same words used in the British North America Act, 1867, were intended to have the same meaning; "marriage and divorce," which, by the 91st section of the same Act, are reserved to the Parliament of the Dominion, signify, in their opinion, all matters relating to the *status* of marriage, between what persons and under what circumstances it shall be created and (if at all) destroyed. There are many reasons of convenience and sense why one law as to the status of marriage should exist throughout the Dominion, which have no application as regards the uniformity of the procedure, whereby that *status* is created or evidenced.

Convenience, indeed, and reason would seem alike in favour of a difference of procedure, being allowable in provinces differing so widely in external and internal circumstances, as those of which the Dominion is composed, and of permitting the provinces to settle their own procedure for themselves, and they are of opinion that this permission has been granted to the provinces by the Imperial Parliament, and that the New Brunswick legislature was competent to pass the bill in question.

I have, &c.,

GRANVILLE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 12th April, 1870.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th April, 1870.

With reference to the Act passed by the legislature of the province of New Brunswick, in the fourth session of the General Assembly thereof (being the second session since the passing of the "British North America Act, 1867,") entitled: "An Act relating to Marriage Licenses," and which Act was reserved by the Lieutenant-Governor for your Excellency's assent, the undersigned has the honour to report:

That the Act was submitted by the Secretary of State for the Colonies, for the opinion of the law officers of the Crown in England, and they report that the same is within the jurisdiction of the legislature of the province of New Brunswick. He therefore begs leave to recommend that your Excellency give your assent thereto.

All which, &c.

JOHN A. MACDONALD.

*Order in Council giving assent to the Act above mentioned, published in Canada Gazette on the 16th day of April, 1870. Vol. III., No. 42, p. 844.*

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*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 6th April, 1870.*

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DEPARTMENT OF JUSTICE, OTTAWA, 5th April, 1870.

With reference to the Act passed by the legislature of the province of New Brunswick in the fourth session of the twenty-second General Assembly thereof (being the second session since the passing of the British North America Act, 1867), entitled :

“An Act in addition to, and in amendment of, Chap. 60, Title VIII., of the Revised “Statutes, ‘Of Harbours.’”

And which Act was reserved by the Lieutenant-Governor of the province for the assent of his Excellency the Governor General, the undersigned has the honour to report :

That in his opinion the Act in question is beyond the jurisdiction of the local legislature. He therefore begs leave to recommend that your Excellency do not give your assent thereto.

All which, &c.

JOHN A. MACDONALD.



## NEW BRUNSWICK, 33RD VICTORIA, 1870.

(5TH SESSION—22ND GENERAL ASSEMBLY.)

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th October, 1870.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th October, 1870.

With reference to the Imperial British North America Act, 1867, and also to the Order in Council of the 9th June, 1858, on the memorandum of the undersigned relative to the course to be pursued with respect to the Acts passed by the provincial legislatures, the undersigned has the honour to report :

That in his opinion all the Acts passed by the legislature of the province of New Brunswick in the last session, being the fifth session of the twenty-second General Assembly (with the exception of chapter 35), are free from objection of any kind. He therefore recommends that the same be left to their operation.

That with reference to chapter 35, entitled :

“ An Act to divide the Parish of St. Stephen, in the County of Charlotte, and to erect a separate District for Ecclesiastical purposes,” there are two petitions before his Excellency praying that the Act be disallowed, after consideration of which a further report will be made.

All which, &c.

JOHN A. MACDONALD.

NOTE.—*The Act above mentioned, chapter 35, has been allowed to go into operation by efflux of time.*

## NEW BRUNSWICK, 34TH VICTORIA, 1871.

(2ND SESSION—22ND GENERAL ASSEMBLY.)

*Lieutenant-Governor Wilmot to the Secretary of State for the Provinces.*

GOVERNMENT HOUSE, NEW BRUNSWICK, 29th May, 1871.

SIR,—I have the honour to inclose the copy of "An Act relating to the Synod of the Church of England, in the Diocese of Fredericton and Province of New Brunswick," which, by the advice of the Attorney-General, I have reserved for the signification of the pleasure of his Excellency the Governor General.

I am not aware of anything unconstitutional in the bill, but the Attorney-General thought that, as the first section contained the clause "any rights of the Crown to the contrary notwithstanding," it had better be reserved, I hope it may be in your power to advise his Excellency the Governor General to signify his assent at an early day, so that action may be had, preparatory to the meeting of synod in July.

I have, &amp;c.,

L. A. WILMOT,  
*Lieutenant-Governor.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th June, 1871.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th June, 1871.

The undersigned has the honour to report that a bill passed by the legislature of New Brunswick at its late session, chap. 8, entitled: "A Bill relating to the Synod of the Church of England, in the Diocese of Fredericton and Province of New Brunswick," has been reserved and transmitted by the Lieutenant-Governor of that province for the signification of the pleasure of your Excellency.

The undersigned having carefully examined the provisions of the said bill, is of opinion that it is within the jurisdiction of the legislature of New Brunswick, and as no rights of the Crown are affected by it, he recommends that your Excellency do give your assent thereto.

All of which is respectfully submitted.

JOHN A. MACDONALD.

*Proclamation giving assent to the Act above mentioned, published in the Canada Gazette on the 7th day of June, 1871, vol. IV, No. 50, page 1169.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council, on the 22nd January, 1872.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th January, 1872.

The undersigned, to whom were referred certified copies of the Acts of the General Assembly of the province of New Brunswick, passed in the month of May, 1871, in the thirty-fourth year of Her Majesty's reign, has the honour to report that all the said Acts, excepting chapters 1, 16 and 19, are free from objection, and he recommends that they be left to their operation.

With respect to chapter 1, the 14th section of the Act is in excess of jurisdiction. It provides that the police magistrate of the city of Fredericton shall have power to do alone such acts as are required to be done by two or more justices of the peace.

This provision is general in its terms, and would be held, it is presumed, to authorize the police magistrate to act alone in criminal cases where the statutes of the Dominion provide that two or more justices must act. Such an enactment, though a very proper one, is beyond the competence of the local legislature, as it, in effect, repeals the provision in the Act of the general legislature.

The attention of the government of New Brunswick should be invited to this, with the view of having the clause amended at the next session. There will be no difficulty in obtaining a general Act from the Dominion Parliament, providing that police and stipendiary magistrates should have the powers usually conferred on two or more justices.

It should also be noticed that the 2nd clause recites the title of the Act inaccurately, which error should be amended.

Chapter 19, "An Act to authorize the appointment of a District or Stipendiary Magistrate for the County of Gloucester," is objectionable, for the same reason as above given respecting chapter 1.

With respect to chapter 6, intituled: "An Act in addition to an Act passed in the 33rd year of the reign of her present Majesty, intituled: "An Act to continue and amend an Act to regulate the sale of Spirituous Liquors,"—the undersigned thinks it well to remark, that he entertains considerable doubt whether it, and the Act which it amends, are not, in some respects, *ultra vires*.

The 92nd section of the Union Act gives to provincial legislatures the exclusive power of making laws in relation to shop, saloon, tavern, auctioneer and other licenses, in order to the raising of revenue for provincial, local or municipal purposes.

The Acts in question, however, go further than making provision for the raising of revenue by charging license fees. They contain certain clauses placing restrictions on the issue of tavern licenses, such restrictions having no connection with any revenue.

Now, by the Union Act, the duty of all legislation relating to the regulation of trade and commerce, is thrown upon the general legislature, and, in the opinion of the undersigned, the provisions in these Acts are in regulation of trade, and do not concern the raising of revenue.

The undersigned recommends that the Act be left to its operation, leaving it to any persons thinking themselves aggrieved by any action under these provincial statutes, to test their constitutionality in the courts. The attention of the provincial government should, however, be called to the matter as worthy of their consideration.

Numerous petitions to his Excellency the Governor General, from the Roman Catholics of New Brunswick, most respectably signed, have been received, praying that the Act, chapter 21, intituled: "An Act relating to Common Schools," be disallowed.

The grounds upon which this prayer is based are :

1. That the Act will greatly destroy or greatly diminish the educational privileges which Catholics enjoyed at the time of the passing of the British North America Act, and subsequently.

2. That the pecuniary grants hitherto made to the graded schools have been taken away, although to these grants Catholics may, in most cases, be fairly regarded as having a prescriptive right.

Now the provincial legislatures have exclusive powers to make laws in relation to education, subject to the provisions of the 93rd clause of the British North America Act. Those provisions apply exclusively to the denominational, separate or dissentient schools, they do not, in any way, affect or lessen the power of such provincial legislatures to pass laws respecting the general educational system of the province.

The Act complained of is an Act relating to Common Schools, and the Acts repealed by it apply to parish, grammar, superior and common schools.

No reference is made in them to separate, dissentient or denominational schools, and the undersigned does not, on examination, find that any statute of the province exists establishing such special schools.



It may be that the Act in question may operate unfavourably on the Catholics or on other religious denominations, and if so, it is for such religious bodies to appeal to the provincial legislature, which has the sole power to grant redress.

As, therefore, the Act applies to the whole school system of New Brunswick, and is not specially applicable to denominational schools, the Governor General, has, in the opinion of the undersigned, no right to intervene.

As to the second objection respecting pecuniary grants, these must, of course, be under the annual supervision of the legislature, which has the sole power to deal with the public funds; unless, by special enactment, those grants have been conferred for a specified period by an Act of the legislature.

In such case the grant might be considered in the nature of a contract, and the repeal might be held to a breach of that contract.

The undersigned does not find that any such statutory contract has been made. Under the circumstances he is, therefore, of opinion that no other course is open to the Governor General, than to allow the Act to go into operation.

All which is respectfully submitted.

JOHN A. MACDONALD.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th day of November, 1872.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th October, 1872.

The undersigned has the honour to report:—

1. That, upon the 30th May last, the House of Commons of Canada passed the following resolution:—

“That this House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that province, and hopes that it may be so modified during the next session of the legislature of New Brunswick, as to remove any just grounds of discontent that now exist, and this House deems it expedient that the opinion of the law officers of the Crown in England, and, if possible that of the Judicial Committee of the Privy Council, should be obtained as to the right of the New Brunswick legislature to make such changes in the school laws, as deprived the Roman Catholics of the privileges they enjoyed at the time of the union, in respect of religious education in the common schools, with the view of ascertaining whether the case comes within the terms of the 4th subsection of the 93rd clause of the British North America Act, 1867, which authorizes the Parliament of Canada to enact remedial laws for the execution of the provisions respecting education in the said Act. The House divided, and it was resolved in the affirmative.”

2. That the sections of the British North America Act, 1867, to which allusion is above made, are as follows:

#### “EDUCATION.

“93. In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

“(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union:

“(2.) All the powers, privileges and duties at the union, by law conferred and imposed in Upper Canada, on the separate schools and school trustees of the Queen’s Roman Catholic subjects shall be, and the same are hereby, extended to the dissentient schools of the Queen’s Protestant and Roman Catholic subjects in Quebec:

“(3.) Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an

appeal shall lie to the Governor General in Council, from any Act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects, in relation to education :

"(4.) In case any such provincial law, as from time to time, seems, to the Governor General in Council, requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council on any appeal under this section, is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

3. That the Act of the province of New Brunswick, of 1871, referred to in the resolution of the House of Commons, is as follows :—

34th Vic., cap. 21, 1871.—"An Act relating to Common Schools," passed 17th May, 1871."

4. That an appeal by petition was thereupon made to his Excellency the Governor General, by the Roman Catholic hierarchy, clergy and laity of the province, against the last recited Act, and praying that his Excellency would be pleased to disallow the same under the powers conferred by the British North America Act, 1867. The petition which was printed in numerous copies, and signed by the Roman Catholics in different parts of the province, is as follows :—

*"To His Excellency the Right Honourable Baron Lisgar, G.C.M.G., Governor General of Canada, &c., &c., &c."*

"The petition of the undersigned Catholics of Memramcook, Dorchester, Westmoreland, in the province of New Brunswick, humbly sheweth :—

"That the Act relating to common schools, passed at the late session of the local legislature of this province, if allowed to go into operation, will destroy or greatly diminish the educational privileges which the Catholics of this province enjoyed at the time of the passing of the British North America Act, and subsequently.

"That under the school law in force in this province at the time of the passing of the British North America Act, and up to the present time, Catholics were enabled, wherever their numbers were sufficiently large, to establish schools in which a good religious and secular education was afforded.

"That in the cities and other centres of large populations, for the wants of which the law did not sufficiently provide, your petitioners at a cost truly enormous, when compared to their means, erected large and commodious buildings in which they established and maintained graded schools, equal in all respects to any primary schools existing in these provinces, and that they received legislative grants to aid in the maintenance of those schools. To these grants they may, in most cases, be fairly regarded as having a prescriptive right.

"That in districts in which Catholics were too few in number to maintain separate schools, they could not be compelled to contribute to the support of any schools in which they had reason to apprehend that anything would be done to sap the faith or weaken the religious convictions of their children ; and that this afforded them a safeguard and protection which the Act lately passed will wholly destroy.

"That the School Act of last session was not asked for or desired by the people of this province, but was passed through an undue influence brought to bear upon the members of the legislature ; several members of the assembly—who when elected were known to be opposed to this measure—having by the use of that influence been induced to violate their pledges and disregard the well-understood wishes of their constituents.

"That when the bill was before the legislature, the Catholics, who were more than one-third of the entire population of the province, asked by petition that the right enjoyed by the Protestant minority in the province of Quebec, to establish dissentient or separate schools, should be accorded to them, and that this was refused.

"That in the legislative council, an amendment giving the right to establish separate Schools was only lost on equal division.

"That the Act of last session provides that there shall be a compulsory rating and assessment for the support of schools in every county in the province, in a fixed proportion to the number of the inhabitants, and that no part of the money so raised, or of any money appropriated by the provincial government under this Act for educational purposes, shall be given to any school in which the education is religious.

"That in the several school districts in which the counties are to be divided, other sums are to be raised for school purposes, and the determination of the amount and of the mode of expenditure, the appointment of trustees and all that concerns the management of the schools, are vested absolutely in the majority; thus, by process of law, depriving your petitioners, who, in most instances, are in the minority, of all rights and all the protection of law.

"That, if the Act be allowed to go into operation, your petitioners will be compelled to contribute to the support of a school system of which they conscientiously disapprove. And if they would not expose their children to what they regard as the most serious and alarming dangers, they must maintain other schools at their own expense—thus paying twice, while others pay but once; or when their numbers or means will not enable them to establish and maintain schools to which they can with safety send their children, will be compelled to allow them to grow up in ignorance.

"That this would be a most serious infringement upon the rights of your petitioners—a most serious deprivation of the educational privileges they have hitherto enjoyed—and a palpable violation of the spirit of the British North America Act.

"Your petitioners therefore humbly pray that your Excellency will be pleased to disallow the said Act.

"Signed by Rev. C. Lefebvre, S.S.C., and 537 others."

To this petition answer was made as follows (a despatch to the same effect being also sent to the government of New Brunswick):—

"DEPARTMENT OF THE SECRETARY OF STATE, "OTTAWA, 24th January, 1872.

"MY LORD,—

"I am directed to inclose to your Lordship, an extract from the report of the Minister of Justice on the numerous petitions from the Roman Catholics of New Brunswick, praying that the Act chapter 21, of the last session of the legislature of New Brunswick, intituled: "An Act relating to Common Schools," be disallowed, and to inform your Lordship that the conclusions of the said report have been agreed to by his Excellency the Governor General in Council.

"I have, &c.,

E. PARENT,  
*Under Secretary of State.*

(Here follows extract from the Report of the Minister of Justice, dated 20th January, 1872. See ante page 622.)

The following correspondence also took place, which, together with all the communications on this subject, was laid before the Parliament of Canada at its last session.

"To His Excellency the Governor General in Council:

"MY LORD,—On behalf of my parishioners and myself, I have the honour to transmit the inclosed memorial. I most respectfully submit you will find in the document itself intrinsic reasons sufficient to induce you in council to refuse your sanction to a school bill, against which the entire Catholics of New Brunswick, and many others, protest so generally and so loudly.



"It must appear strange to a statesman of such great experience and enlightened views as your Excellency, that whilst Great Britain and Canada, both the guides to wide legislation among the most enlightened inhabitants of Great Britain and British America, and whilst the greatest men those countries have produced—such as the present and last premiers, Gladstone and Disraeli, the Bishop of Exeter, the Fellows of Trinity College, Dublin, and your own noble, brave and wise fellow-countryman, the late Duke of Wellington—were and are for separate schools, to satisfy the consciences and religious convictions of the various denominations in their respective countries, the local legislature of New Brunswick would pass a law in opposition to the examples and precedents which they are accustomed to follow.

"But I will not pursue the matter any further. I will leave the case in your Excellency's hands, fully confident that it will secure from you that discussion which will best secure the peace and serve the best interests of New Brunswick.

"I have, &c,

JAMES QUINN,  
"Catholic Pastor.

"P. S.—Hon. Mr. Tilley, whom I met at his residence, St Andrew, told me the Governor in Council would take the signature of the pastor for those of his congregation.

"JAMES QUINN.

"ST. STEPHEN, N. B. 1st June, 1871."

*"To His Excellency the Governor General of the Dominion of Canada, in Council :*

"The memorial of the undersigned Catholic inhabitants of the parish of St. Stephen, county of Charlotte, province of New Brunswick, humbly sheweth :

"That the present school bill just passed by the legislature of New Brunswick, had not been desired by the inhabitants of that province.

"That two-fifths of the entire population have been opposed to its becoming law, as is manifest from the petitions numerously signed which have been presented against it.

"That the school bill passed the House of Assembly by the votes of a few members who, if they acted according to the well-known wishes of their constituents, would have defeated it.

"That the bill would miscarry in the legislative council where the votes were equal on the division, had it not been for the vote of a government official, who is a railroad commissioner.

"That the bill is the more grievous and intolerable to the people of New Brunswick, since it deprives them of important privileges long enjoyed—"separate schools," where useful education, founded upon religion, can be taught, and which their fellow-subjects in Canada now possess.

"That in the opinion of your memorialists, if the school bill is put into operation, it will be a prolific source of contention and strife in a vast number of the local school districts, the result of which will be the closing of a great number of schools, and the disturbance of that peace which now happily prevails over the province.

"Your memorialists, therefore, humbly pray that your Excellency in Council will exercise your prerogative, and refuse to give the sanction of law, to so unfair and obnoxious a measure as this school bill.

"And your memorialists, as in duty bound, shall ever pray, &c.

"Signed on behalf of his parishoners,

JAMES QUINN,  
"Catholic Pastor.

"ST. STEPHEN, 1st June, 1871."

*"The Governor General's Secretary to the Reverend J. Quinn.*

"OTTAWA, 6th June, 1871.

"SIR,—I have the honour, by desire of the Governor General, to acknowledge the receipt of a memorial, signed by yourself, on behalf of the Catholic inhabitants of the parish of St. Stephen, praying his Excellency to withhold his assent to a school bill recently passed by the legislature of New Brunswick.

"In reply I am to inform you that the petition has been duly forwarded to the proper officer, in order that it may be submitted for the consideration of the Privy Council, by whose advice the royal instructions bind the Governor General to guide his proceedings in all matters of local concernment.

"I have, &.,

JOHN KIDD,

*"For the Governor's Secretary."*

5. That the following are copies of the various Acts passed by the legislature of the province of New Brunswick, on the subject of the school law of that province, showing the law as it existed at the time of the passing of the Act, to which objection is taken, and which were repealed thereby :—

21st Vic., cap. IX., 1858, "An Act relating to Parish Schools," passed 6th April, 1858.

26th Vic., cap. VII., 1863, "An Act in amendment of the Act 21st Victoria, chapter 9, intituled : "An Act relating to Parish Schools," passed 20th April, 1863.

30th Vic., cap. XXVIII., 1867, "An Act relating to Grammar, Superior, and Common Schools," passed 16th June, 1867.

6. That the question remained in this position until the meeting of the Parliament of Canada, in April, 1872. On the 20th of May, the subject was brought before the House of Commons, and the following proceedings ensued :—

"Mr. Costigan moved, that an address be voted to his Excellency, representing :—That it is essential to the peace and prosperity of the Dominion of Canada that the several religions therein prevailing, should be followed in perfect harmony by those professing them in accord with each other, and that every law passed either by this Parliament or by the local legislature, disregarding the rights and usages tolerated by one of such religions, is of a nature to destroy that harmony. That the local legislature of New Brunswick, in its last session, in 1871, adopted a law respecting common schools, forbidding the imparting of any religious education to pupils, and that that prohibition is opposed to the sentiments of the entire population of the Dominion in general, and to the religious convictions of the Roman Catholic population in particular. That the Roman Catholics of New Brunswick cannot, without acting unconscientiously, send their children to schools established under the law in question, and are yet compelled, like the remainder of the population, to pay taxes to be devoted to the maintenance of those schools. That the said law is unjust, and causes much uneasiness among the Roman Catholic population, in general disseminated throughout the whole Dominion of Canada, and that such a state of affairs may prove the cause of disastrous results to all the confederated provinces. And praying his Excellency, in consequence, at the earliest possible period, to disallow the said New Brunswick school law."

"Hon. Mr. Gray moved in amendment, to leave out all the words after 'Canada' in line 2, and to substitute the following :—'That the constitutional rights of the several provinces should be in no way impaired by the order of this Parliament—that the law passed by the local legislature of New Brunswick respecting common schools, was strictly within the limits of its constitutional powers—and is amenable to be repealed or altered by the local legislature, should it prove injurious or unsatisfactory in its operation ; that not having yet been in force six months, and no injurious consequences to the Dominion having been shown to result therefrom, this House does not deem it

proper to interfere with the advice that may be tendered to his Excellency the Governor General, by the respective ministers of the Crown, respecting the New Brunswick school law.'

"Hon. M. Chauveau moved in amendment to the said proposed amendment, That all the words after 'that' in the original motion be expunged, and the following inserted in lieu thereof:—'an humble address be presented to Her Majesty, praying that she will be pleased to cause an Act to be passed amending 'The British North America Act, 1867,' in the sense which this House believes to have been intended at the time of the passage of the said Act, by providing that every religious denomination in the provinces of New Brunswick and Nova Scotia shall continue to possess all such rights, advantages and privileges, with regard to their schools, as such denomination enjoyed in such province at the time of the passage of the said last mentioned Act; to the same extent as if such rights, advantages and privileges had been duly established by law.'

"And a debate arising thereon, the said debate was, on motion of Hon. Mr. Smith (Westmoreland), adjourned until Wednesday next, to be then the first order of the day.

"The House then resumed the adjourned debate on Mr. Costigan's motion, for an address to his Excellency on the subject of the New Brunswick school law:—and of Hon. Mr. Gray's proposed amendment thereto;—and of Hon. Mr. Chauveau's amendment to the said proposed amendment.

"And the question being put on the Hon. Mr. Chauveau's amendment in amendment, it was negatived:—Yeas 34, Nays 126.

"The question being then put on the Hon. Mr. Gray's proposed amendment,

"Mr. Colby moved in amendment thereto, that all after the word 'that' be expunged and the following substituted in lieu thereof:—'this House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that province, and hopes that it may be so modified during the next session of the legislature of New Brunswick, as to remove any just grounds of discontent that now exist; which was agreed to on the following division:—Yeas 117, Nays 52.

"Hon. Mr. Dorion then moved that the following words be added to Mr. Colby's motion, viz.:—'And this House further regrets that, to allay such well-grounded discontent, his Excellency the Governor-General has not been advised to disallow the School Act of 1871, passed by the legislature of New Brunswick,' which was negatived on the following division:—Yeas 38, Nays 117.

"And the question being put on the main motion, as amended,

"Hon. Mr. Mackenzie moved, that the following words be added thereto:—

"'And that this House deems it expedient, that the opinion of the law officers of the Crown in England, and if possible the opinion of the Judicial Committee of the Privy Council, should be obtained as to the right of the New Brunswick legislature to make such changes in the school law as deprived the Roman Catholics of the privileges they enjoyed at the time of the union, in respect of religious education in the common schools, with the view of ascertaining whether the case comes within the terms of the 4th subsection of the 93rd clause of the British North America Act, 1867, which authorizes the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act;' which was agreed to.

The question being then put on the main motion, as amended, it was agreed to on a division, and is as follows:—

"That this House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that province, and hopes that it may be so modified during the next session of the legislature of New Brunswick as to remove any just ground of discontent that now exist, and this House deems it expedient that the opinion of the law officers of the Crown in England, and if possible the opinion of the Judicial Committee of the Privy Council, should be obtained as to the right of the New Brunswick legislature to make such changes in the school law, as deprived the Roman Catholics of the privileges they enjoyed at the time of the union, in respect of religious education in the common schools, with the view of ascertaining



whether the case comes within the term of the 4th subsection of the 93rd clause of the British North America Act, 1867, which authorizes the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education of the said Act; the House divided, and it was resolved in the affirmative."

In accordance, therefore, with the resolution of the House of Commons, the undersigned has the honour to recommend that his Excellency the Governor General be requested to transmit the statement herein made to Her Majesty's Secretary of State for the Colonies, in order that the opinion of the law officers of the Crown in England, and if possible the opinion of the Judicial Committee of the Privy Council, may be obtained as to the right of the New Brunswick legislature to make such changes in the school law, as deprived Roman Catholics of the privileges they enjoyed at the time of the union in respect of religious education in the common schools, with the view of ascertaining whether the case comes within the terms of the 4th subsection of the 93rd clause of the British North America Act, 1867, which authorizes the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act.

All which is respectfully submitted.

JOHN A. MACDONALD.

*The Earl of Dufferin to the Earl of Kimberley.*

GOVERNMENT HOUSE, OTTAWA, 6th November, 1872.

MY LORD,—I have the honour to inclose a copy of a report of a committee of the Privy Council of the Dominion of Canada, approved by me on the 6th instant, and accompanied by a printed copy of a report from the Minister of Justice, relative to an Act of the legislature of New Brunswick relating to common schools.

My ministers have requested me to forward these documents to your Lordship, in accordance with a resolution adopted by the House of Commons of Canada, on the accompanying report.

I have, &c.,

DUFFERIN.

*Lieutenant-Governor Wilmot to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, NEW BRUNSWICK, 31st December, 1872.

SIR,—I have the honour of sending with this despatch a copy of the minute of my Executive Council on the case submitted by the Dominion government for the consideration of the Crown officers in England, on the New Brunswick School Act of 1871, and to request that the same may be laid before his Excellency the Governor General, to be transmitted to the Right Honourable the Secretary of State for the Colonies, to be submitted to the Crown officers.

I have, &c.,

L. A. WILMOT,  
*Lieutenant-Governor.*

*Copy of a Memorandum of the Executive Council in Committee, approved of by the Lieutenant-Governor, on the 23rd day of December, A.D. 1872.*

The Executive Council, having had under consideration a copy of a minute of the Privy Council of Canada, submitting for such remarks as may be thought proper to be made thereon, a statement in reference to the school law of New Brunswick, made by the Honourable the Minister of Justice, for transmission to the Right Honourable the

Secretary of State for the Colonies, in pursuance of a resolution of the House of Commons of the 30th May last, have the honour to make the following observations:

The statement sets out—

1. The resolution of the House of Commons of 30th May last, on the above subject, which is as follows:—"That this House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that province, and hopes that it may be so modified during the next session of the legislature of New Brunswick, as to remove any just grounds of discontent that now exist; and this House deems it expedient that the opinion of the law officers of the Crown in England, and if possible, the opinion of the Judicial Committee of the Privy Council, should be obtained as to the rights of the New Brunswick legislature to make such changes in the school law, as deprived the Roman Catholics of the privileges they enjoyed at the time of the union, in respect of religious education in the common schools, with the idea of ascertaining whether the case comes within the terms of the 4th subsection of the 93rd clause of the British North America Act, 1867, which authorizes the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act."

2. Section 93 of the British North America Act, 1867.

3. The Common Schools Act, 1871.

4. Petitions and correspondence from the Roman Catholic clergy, praying his Excellency the Governor General to disallow the last-mentioned Act; together with an extract from the report of the Minister of Justice, dated January 20th, 1872, recommending that the said Act be allowed to go into operation.

5. The various Acts passed by the legislature of New Brunswick on the subject of the school law of the province, showing the law as it existed at the time of the passing of the Common Schools Act, 1871, and which were repealed thereby, viz., An Act relating to Parish Schools, 21st Vic., c. 9; An Act in amendment of an Act relating to Parish Schools, 26th Vic. c. 7; and an Act relating to Grammar, Superior and Common Schools, 30th Vic., c. 27.

6. The proceedings of the House of Commons, from the 20th to the 30th May last, in reference to the foregoing subject.

Two questions appear to be raised by the resolution of the House of Commons: the one relating to the powers of the New Brunswick legislature, the other relating to the powers of the Parliament of Canada.

Before considering such questions, it may be remarked that in the resolution it is assumed, as a fact, that the New Brunswick legislature, by the passage of the Common Schools Act, 1871, made such changes in the law, as deprived the Roman Catholics of the privileges they enjoyed at the time of the union in respect of religious education in the common schools. This assumption the Executive Council cannot for a moment admit. No privileges are taken away by the Common Schools Act, 1871, except such as were secured by the statutes thereby repealed; and the Executive Council regret that the House of Commons should have assumed a state of facts, which should dispense with the necessity of examining the legislation of the province on the subject.

The first question relates to the right of the New Brunswick legislature to make such changes in the school law as were in fact effected by the passage of the Common Schools Act, 1871, and involves the constitutional powers of the legislature.

Upon this point the Executive Council fully concur in the following opinion of the Minister of Justice, contained in his report before alluded to:—

"The provincial legislatures have exclusive power to make laws in relation to education, subject to the provisions of the 93rd clause of the British North America Act, 1867. Those provisions apply exclusively to the denominational, separate or dissentient schools. They do not in any way affect or lessen the power of provincial legislatures to pass laws respecting the general educational system of the province.

"The Act complained of is an Act relating to Common Schools, and the Act repealed by it applies to parish, grammar, superior and common schools. No reference is made in them to separate, dissentient, or denominational schools, and the undersigned



does not, on examination, find that any statute of the province exists establishing such special schools. \* \* \* As, therefore, the Act applies to the whole school system of New Brunswick, and is not specially applicable to denominational schools, the Governor General has no right to intervene."

The Executive Council would not have thought it necessary to add anything in support of these conclusions; but the unwarrantable assumption in the resolution of the House of Commons as to the effect of the recent legislation of this province, and the attempt to maintain that the Roman Catholics had, by the Parish School Act of 1858 (21 Vic, c. 9), rights or privileges with respect to denominational schools which bring the case under the 1st subsection of section 93 of the British North America Act, would seem to render it necessary to examine more particularly the provisions of such section, and the various Acts of New Brunswick set out in paragraph 5 of the case.

In a question affecting the constitutionality of an Act of the legislature, the Executive Council would refer to the principle which has been uniformly adopted in similar cases by the Supreme Court of the United States. In delivering the judgment of the Supreme Court, in *Dartmouth College vs. Woodward*, 4 Wheaton, 518, Chief Justice Marshall says:—

"This court can be insensible neither to the magnitude nor delicacy of this question. The validity of a legislative Act is to be examined, and the opinion of the highest law tribunal of the state is to be revised. On more than one occasion this court has expressed the cautious circumspection with which it approaches the consideration of such questions, and has declared that in no doubtful case would it pronounce a legislative Act to be contrary to the constitution."

And again, in *Fletcher vs. Peck*, 6 Cranch, 128, the same learned judge says:—

"The question whether a law be void for its repugnancy to the constitution, is at all times a question of much delicacy, with ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligation which that station imposes; but it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the Judge feels a clear and strong conviction of their incompatibility with each other."

In a case in the Supreme Court of Massachusetts, *Wellington*, petitioner, 16 Pick., 95, Chief Justice Shaw held that—

"The courts would never declare a statute void unless the nullity and invalidity of the Act are placed, in their judgment, beyond reasonable doubt."

And in another case in the Supreme Courts of the United States, *Ogden vs. Saunders*, 12 Wheat, 270, Mr. Justice Washington, after expressing the opinion that the particular question there presented, and which regarded the constitutionality of a state law, was involved in difficulty and doubt, said:

"But if I could rest my opinion in favour of the constitutionality of the law on which the question arises, on no other ground than this doubt, so felt and acknowledged, that alone would in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed, to presume in favour of its validity, until its violation of the constitution is proved beyond all reasonable doubt."

By section 93 of British North America Act, 1867, the provincial legislatures have exclusive powers to make laws in relation to education, subject and according to certain provisions. Of the provisions, the first declares that nothing in any law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law in the province at the union. This provision is in general terms, and is only in limitation or restraint of the general grant to legislative power.

The second provision refers specially to Quebec, extending to the dissentient schools of that province, the powers and privileges in Ontario accorded to the Roman Catholic separate schools; this provision imposes a duty on the Quebec legislature



to make the necessary laws for the due execution thereof. The third provision gives an appeal to the Governor General in Council from any Act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education in any province, wherein a system of separate or dissentient schools existed by law at the union, or should be thereafter established by the legislature of the province. Such a system of schools, whereby the religious minority is permitted to escape from the operation of the general public system, and to establish schools of the denomination, existed at the union in the province of Ontario under the name of "Separate Schools," and in the Province of Quebec under the name of "dissentient schools," but did not at the union exist, nor has it since been established, in any of the other provinces.

The fourth provision (subsection 4) relates to matters of procedure, and vests certain powers of remedial legislation in the Parliament of Canada.

In order to render any law of a provincial legislature inoperative under the 1st subsection of section 93, it is requisite that there should in such province have been at the union, denominational schools, with respect to which certain class of persons had rights or privileges, and that those rights or privileges should have been secured by law.

This would seem to lead at once to the consideration of the laws in force in New Brunswick at the union, for the purpose of determining whether, within the meaning of subsection 1, section 93 of the British North America Act, the Roman Catholics had by such laws, any rights or privileges with respect to denominational schools; and of the Common Schools Act, 1871, for the purpose of determining whether anything therein prejudicially affected such rights or privileges.

But it has been attempted to be shown that the first subsection of section 93 of the British North America Act, 1867, so clearly refers to New Brunswick, that the fact of such a section renders unnecessary any inquiry into its meaning or application. It is said that as subsections 2 and 3 refer specifically, or by clear intendment to the case of Ontario and Quebec, subsection 1 must refer to the case of the other provinces, and therefore presumably to New Brunswick; and in the use of the words "denominational schools" in the 1st subsection, and of the words "system of separate or dissentient schools" in the 2nd and 3rd subsections, is referred to as indicating that the "denominational schools" in the 1st subsection cannot include the separate or dissentient schools in the 2nd or 3rd subsections.

The effect and object of this view is to import a supposed intention which shall control the words, and relieve from the embarrassment of investigating the language of the 93rd section of the school legislation of New Brunswick.

The answer to this is:—

(1.) That subsection 1 may have been inserted with no particular intent, but *ex majore cautela*.

(2.) That if it were intended to refer specifically to New Brunswick, analogy to the following subsections would have suggested a particular reference.

(3.) That inasmuch as in terms it is large enough to cover the case of any of the provinces, it is sufficient to inquire whether it is in fact applicable to New Brunswick, without inquiring whether or not it does or does not apply to any other province. It might equally be contended that it applies to other provinces because it does not apply to New Brunswick.

(4.) That subsection 1 is the general abstract provision, applicable to any province in which, at the Union, denominational schools existed by law, whether such schools be known as such, or by the secondary and applied name of separate or dissentient schools, and is the only section which imposes restraints upon the legislative power of the provinces in respect thereto, the remaining subsections being particular and remedial provisions. This appears more clear when it is considered that in the scheme of union agreed to at Quebec, by the representatives of the several provinces in 1864, and which formed the basis of all the public discussions of the question of union; the separate and dissentient schools of Ontario and Quebec were referred to as denominational schools; for, under the head "local government," resolution 43, of the said

scheme, it is declared that the local legislatures shall *inter alia* have power to make laws respecting the following subjects:—

“6th. Education: Saving the rights and privileges which the Protestant or Catholic minority in both Canadas may possess, as to their denominational schools at the time when the union goes into operation.”

(5.) That in no view can the language of the Imperial Act be taken as an interpretation of the meaning of the New Brunswick Acts of Assembly.

(6.) But in order to satisfy the terms of subsection 1, it is not necessary to resort to the school system of New Brunswick, inasmuch as in each of the provinces there were at the union specific denominational schools existing by law, the rights held by the various classes with respect to which are rights protected by this subsection. Thus in Nova Scotia: King's College, Church of England; Acadia College, Baptist; Pictou Academy, Presbyterian; St. Mary's and St. François Xavier Colleges, Catholic. In Quebec: L'Assomption College; Laval University, Catholic. In Ontario: Regiopolis College, Bytown College, St. Michael's College, Victoria College.

So in New Brunswick, standing outside of the general school system, and in no respect under the control or inspection of the public or educational authorities, and in no wise affected by the provisions of the Common School Act, 1871, there were three denominational schools: the Madras School, in which the members of the Church of England have interests different from the public at large (see Acts of Assembly, 60th George III., chap. 6; the Wesleyan Academy (see Acts of Assembly, 12th Victoria, chap. 65), and the Wesleyan College (see Acts of Assembly, 21st Victoria, chap. 57).

If it were proposed by provincial legislation to derogate from the statutable rights of those institutions, it might reasonably be contended that such legislation would be inoperative and void; for example, if it were proposed to deprive the Wesleyan College of the right of conferring degrees, or to interfere with the rights of the governor and trustees of the Madras School, under their charter, confirmed by Act of Assembly, 60th George III., chap. 6, or to repeal section 11 of the Act incorporating Trustees of the Wesleyan academy at Mount Allison, Sackville, which provides that—

“No person shall teach, maintain, promulgate, or enforce any religious doctrine or practice in the said academy, or any department thereof, or in any religious services held upon the said premises, contrary to what is contained in certain notes on the New Testament, commonly reported to be the notes of the said Reverend John Wesley, A. M., and in the first four volumes of sermons commonly reputed to have been written and published by him.

It is submitted, therefore, that it cannot be assumed that the general provisions of subsection 1, section 93, of the British North America Act, refer particularly to this province; and much less that they refer to the general system of the province, which existed under the several Acts of Assembly, 21st Vic., chap. 9, 26th Vic., chap. 7, and 30th Vic., chap. 27.

Whether or not such subsection does cover the case of schools established under the said several Acts of Assembly, is a matter of interpretation of the language both of the imperial and provincial statutes.

The provincial statutes consisted of the Parish School Act of 1858 (21st Vic., chap. 9), and the Acts 26th Vic., chap. 7, and 30th Vic., chap. 27, in amendment.

The Parish School Act of 1858 was a general public Act, operating territorially through the parish, which in New Brunswick, constitutes the municipal unit for civil purposes. The Act provided for a central and local control of the schools; the central control consisting of the board of education, a superintendent and four inspectors, the local control consisting of three trustees and a school committee of three persons. The superintendent and inspectors were appointed by the Governor in Council, and the governor and his council, with the superintendent, constituted the board of education. The trustees were parish officers, elected by the ratepayers of the parish, at the same time and in the same manner as other parish officers, and were subject to the same penalties as other parish officers. (See section 6, clause 1, 21st Victoria, cap. 9). They were thus officers of the civil government, performing civil functions, and amenable solely to civil authorities, and representing the people in their character as



ratepayers, being no more religious bodies or exercising denominational functions, than the other parish officers elected at the same time and in the same manner viz. :—Overseers of the poor, constables, assessors, and collectors of rates, fence-viewers, pound-keepers, field-drivers, hog-reeves, &c., &c.

Those trustees, as parish officers, divided their respective parishes into convenient school districts, convenient in respect of the civil purposes which the trustees were elected to effect; and from time to time reconstruct them, and defined in writing the boundaries of each district, and filed a description thereof with the clerk of the peace (See section 6, clause 2.)

The public, as opposed to the denominational system, is apparent in the provisions with respect to districting, for it is evident how impossible it would be to divide a parish into districts, territorially corresponding with the religious features of the population, and to define such boundaries in writing.

The trustees, as parish officers, controlled the appointment of the teacher, and gave authority to open the school. (See sec. 6, clause 3). They might suspend, or displace a teacher. (See sec. 6, clause 4). They summoned a meeting of the ratepayers of the district for the purpose of electing a school committee (see section 6, clause 5), and they apportioned amongst the school districts in their respective parishes, any money raised by county or parish assessment for the support and maintenance of the schools therein, in such manner as they might deem just and equitable. (See sec. 6, clause 10).

In all this they acted solely as civil officers, and in the discharge of a public duty were governed by public considerations.

The remaining body having local control was the school committee. This committee was elected by the inhabitants of the school district being ratepayers (see sec. 7, clause 1), and had the immediate charge of the school house and property, library, &c.; they called meetings of the district to determine upon the support of the school; had charge of the money of the district, and care and direction of the children. (See section 7, clauses 2-6). And in towns and populous districts, the ratepayers of the district might elect one or more committees for the district, or a committee for each school, as might be decided by a majority of the electors present (sec. 26th Vic., cap. 7, sec. 2). The school meeting was therefore a collection of rate-paying inhabitants of the district; and such meeting called for the purpose had power to order a rate for the support of the school, or the entire county or parish might provide for the support of the schools of the county or parish respectively, by assessment. (See 21st Vic., cap. 9, sections 21-22).

The nature of the school district is thus defined in a judgment of the Supreme Court of New Brunswick, in *ex parte Jocelyn*, 2 Allen's Rep., 639:—

"When the trustees establish school districts, the foundation is laid of a special jurisdiction to be exercised by a majority of the inhabitants of the parish or district, ratable upon property, over all the inhabitants of the district."

Such was the structure of the Parish School Act of 1858 (21 Vic., cap. 9), and it is inconceivable that schools so created, so controlled, so sustained, could for a moment be regarded as denominational schools. They were clearly schools of the ratepayer, not of the denomination. They existed, not in connection with the denomination, but in connection with the state, and vested no rights or privileges in any class of persons.

But it is alleged, that although the schools of New Brunswick were not denominational schools, they were public schools in which denominational teaching was by law permissible; and that the school system of the province at the union might be described, not perhaps, as a system of denominational schools, but as a system of public schools in which denominational teaching was legalized, subject to a conscience clause in favour of those children whose parents or guardians objected to that teaching; and section 8, clause 5, of the Parish School Act of 1858, is relied upon. That clause is as follows:—

"Every teacher shall take diligent care and exert his best endeavours to impress on the minds of the children committed to his care, the principles of Christianity, morality and justice, and a sacred regard to truth and honesty, love of their country, loyalty, humanity and a universal benevolence, sobriety, industry and frugality, chastity,



moderation and temperance, order and cleanliness, and all other virtues which are the ornaments of human society ; but no pupil shall be required to read or study in or from any religious book, or join in any act of devotion objected to by his parents or guardians ; and the board of education shall, by regulation, secure to all children whose parents or guardians do not object to it, the reading of the Bible in parish schools—and the Bible, when read in parish schools by Roman Catholic children, shall, if required by their parents or guardians, be the Douay version, without note or comment.”

The Executive Council would, however, maintain that no question of the character of the teaching in the public schools can suffice to restrict the general grant of legislative power on the subject of education vested in the legislature of New Brunswick ; that subsection 1 clearly requires the existence of denominational schools, and class rights therein secured by law ; that the public schools, under the entire control of the ratepayer and the provincial authorities, cannot, whatever the character of the tuition, be considered as denominational schools, any right of the individual ratepayer or inhabitant therein being a right as a member of society with respect to public schools, and not a class right with respect to denominational schools ; and that, in short, subsection 1 has no reference to the general public system of education. But the Executive Council denies that the Parish School Act of 1858 legalized denominational tuition.

Now, in order to determine the extent to which this Act allowed religious teaching to be carried on in the public schools, it is necessary to look to the Act as a whole ; for the details of one part of an Act may contain regulations restricting the extent of general expressions used in another part of the same Act.

The right of the Board of Education to prescribe books, maps and apparatus for use in the schools may be implied from section 4, clauses 3 and 11, and from section 5, clause 7.

By section 4, clause 8, the Board of Education had power—

“ To provide for the establishment, regulation and government of school libraries, and the selection of books to be used therein ; but no works of a licentious, vicious or immoral tendency, or hostile to the Christian religion, or works on controversial theology, shall be admitted.”

When works on controversial theology are classed with obscene, vile and infidel publications, and are deemed equally unfit for use in the library, how can it be said that they may be taught in the school room ? Prohibited from use under the eye of the parent, shall they be taught by the teacher ? Shall the library be shut against them, and shall the school door be open to them ? And does not the exclusion from the library of works on controversial or distinctive dogmatic theology, clearly show that in the contemplation of the Act, the schools were to be schools of the public and not of any sect, and that the legislature expressly sought to guard against the introduction of sectarian aims into the administration of school affairs ?

Again, “ the board of education shall secure to all children, whose parents or guardians do not object to it, the reading of the Bible in parish schools : and the Bible when read in parish schools by Roman Catholic children, shall, if required by their parents or guardians, be the Douay version, without note or comment.” (See section 8, clause 5.)

Why without note and comment ? If distinctive doctrinal teaching were allowed, why should the Bible, when read by Roman Catholic children, be the Douay version, without note and comment ? Why not the Douay version with *note and comment* ? Can it be seriously contended that the authorized note and comments by which the Roman Catholic Church declares the meaning of the Scripture shall be excluded, and that the private judgment of the teacher shall expound its meaning, and that this is denominational teaching ? Can this be “ the fulness of distinctive religious teaching ? ” and can it be said that the principles of Christianity, which the law required to be impressed upon the minds of the pupils, are the principles of Christianity “ after a denominational fashion ; ” when works of controversial theology, and the church’s interpretation of the Bible, were expressly excluded ?

Can it be contended that the reading of the Bible, required by the Parish School Act of 1858, to be secured to every pupil, gave a denominational character to the parish

schools? Although Roman Catholics might ask that their children should have the Douay Bible, without note or comment, read, is not such Douay Bible but a different version of the Holy Scripture from the version which is used by Protestants? Neither version professes to be a denominational or sectarian book, but simply the Word of God: and as such its use in school cannot be held to be denominational teaching.

It may also here be remarked, that although the trustees of the parish, the school committee and the teacher, might be all Catholics; and although there might be a single Protestant in the district, the Parish School Act of 1858 gave to his children the legal right, not only of attending such school, but of requiring the reading of the Protestant version in such school. This is utterly inconsistent with the idea that such a school could be a Roman Catholic denominational school; and it is submitted that the character of the school cannot, under the law, be affected by the presence or absence of a Protestant or Roman Catholic child.

And further, in considering the intention of the legislature, it is material to look at the consequences.

The clause of the 8th section above relied on is not permissive, it is mandatory. It does not allow any teacher who may feel disposed to do so, to inculcate the principles of Christianity; it requires every teacher to do so. If then, by the "principles of Christianity," were meant the distinctive and denominational or sectarian expression of those principles, then did the legislature impose upon every teacher, whether male or female, and however well or ill-qualified, whether of the 1st, 2nd, or 3rd class, the absolute duty of teaching the principles of Christianity in their distinctive doctrinal feature. It required every teacher to be a teacher of theology, without requiring any antecedent qualification; and turned every school into a nursery of the church; a school of faith and polemics, with the further consequence that one school might, at one and the same time, be Protestant and Catholic; the head master teaching in one room according to his light the doctrines of Geneva, and the assistant teaching in another the doctrines of Rome.

It would also be a consequence of this, that a district, by a bare majority of one amongst the ratable inhabitants, might impose assessment upon the entire district, for the purpose in effect of turning the school into a Sunday school, for the propagation of the religious views of the majority. The death or removal of a ratepayer might change the character of the school, and the fate of a denomination might hang upon the solvency of one of its members. Almost every district would be annually torn by contending sects in their unseemly strife for power.

Such a system might be described as a system of concurrent endowment—of endowment of every sect that could secure a majority of one at a school meeting. In a country where no church is preferred, and no church is established, it would place in the hands of a dominant sect the state power of taxation, to be wielded for church purposes.

The meaning of section 8, clause 5, is then clear. The legislature required every teacher to impress on the minds of the children the principles of Christianity, in their non-denominational feature, but lest, in so doing, and in the exercise of the discretion vested in the teacher, religious books might be used, or acts of devotion engaged in, to which any tender conscience might object, the conscience clause was inserted, that no pupil should be required to read or study in or from any religious book, or join in any act of devotion objected to by his parent or guardian. The words of the conscience clause do not enlarge the teaching power; they restrict it. The religious books referred to are non-denominational, such books as the board of education would admit to the library. But the teaching of distinctive dogmatic or controversial theology is of the essence of denominational teaching, while it may not unreasonably be concluded that the principles of Christianity to be taught, relate largely to the Christian virtues enumerated in the section itself, in connection with such terms.

It requires no great acquaintance with the works of Catholic and Protestant literature to point to numbers of books emanating from each communion, which, while in the fullest sense religious, do no more relate to distinctive doctrinal theology, than the ten commandments or the Lord's prayer.



Whether or not the legislature judged rightly, that the principles of Christianity are capable of being inculcated in a manner common to the different communions, is not material. It is sufficient that the legislature thought it possible, following therein a very considerable body of authority.

As long ago as 1635, Sir Thomas Browne, referring to the attitude of the Protestant and Catholic churches to each other, wrote—

“We have reformed from them, not against them; for, omitting these impropriations and terms of scurrility betwixt us, which only difference our affections, and not our cause, there is one common name and appellation, one faith and necessary body of principles common to us both.”

And it is well known that in recent times Scripture lessons, sanctioned by the highest authority in the English and Roman Catholic churches, were for years used with entire satisfaction in the national schools of Ireland; and the most recent parliamentary discussions on education show that the question of undenominational teaching is still a question of practical politics.

Such then was the school system of New Brunswick at the union, and at the passing of the Common Schools Act, 1871: a system of public schools operating territorially over the entire province; springing out of the operation of the municipal system, subject to the control and inspection of the government; representing in its local management, the ratepaying inhabitants of the district; exercising at will the civil power of taxation; providing for certain undenominational religious instruction, but providing by a strict conscience clause, for the rights of conscience; requiring the reading of the Holy Scriptures in the ordinary Protestant version, but in the case of the Roman Catholic, allowing the Douay version, without note or comment. To speak of such schools as denominational schools, involve the grossest misconception of language.

The term “denominational schools” clearly means the schools of or belonging to, or in connection with, a denomination, and in which the members of the denomination, have, as such, interests other and different from the interest which they have in them as a portion of the public. Such schools are controlled by the denomination in its interests, and exist at least to a certain extent for denominational, as distinguished from public, purposes.

The meaning of the term was well understood by the imperial parliament when the British North America Act was under consideration.

For thirty six years a system of national, as distinguished from denominational, schools, had existed in Ireland, under which combined literary and separate religious instruction had been given.

On the other hand, at the time of the passage of the British North America Act, the system of primary education in England was chiefly denominational, being carried on mainly through the instrumentality of schools in connection with the various denominations. But by the passage of the Elementary Education Act, 1870, the education of the country was placed on a public basis; and whilst existing denominational schools, and those which might be established within a limited period, were recognized and continued in the receipt of public money, the Act provided for the formation of local school boards, and the establishment of school board schools. By section 14 it is enacted that—

“Every school provided by a school board shall be conducted under the control and management of such boards, in accordance with the following regulations —

“(1.) The school shall be a public elementary school, within the meaning of this Act.

“(2.) No religious catechisms or religious formulary, which is distinctive of any particular denomination, shall be taught in the school.”

Thereby, in the words of Mr. Gladstone, “overthrowing, as far as the rate-school is concerned, the use of that which is the note and characteristic of denominational teaching;” while at the same time admitting of religious instruction, and recognizing the possibility of imparting religious instruction without rendering the school denominational.



In the passage of such Act the present Lord Chancellor thus described those schools, and the character of the religious teaching secured thereby :—

“Religious teaching must be specific, but it need not be sectarian or denominational. The schools would be for every proper purpose, under public observation, superintendence and control, and the exclusion of denominational formularies would tend to remind the teacher that he was not to constitute himself the organ of any particular denomination.”

So the Education (Scotland) Act, 1872, establishes a central board of education, and places the local control of the school in the hands of a school board, elected in each parish and burgh by electors with a rate-paying qualification. It invests all the parish schools and property in the school board, and abolishes all jurisdiction, power and authority possessed or exercised by presbyteries or other church courts, with respect to any public schools. In schools so clearly non-denominational it, however, provides that—

“Every public school, and every school subject to inspection and in receipt of any public money, shall be open to children of all denominations, and any child may be withdrawn by his parents from any instruction in religious subjects, and from any religious observance in any such school; and no child shall, in any such school, be placed at a disadvantage with respect to the secular instruction given therein by reason of the denomination to which such child or his parents belong, or by reason of his being withdrawn from any instruction in religious subjects. The time or times during which any religious observance is practised, or instruction in religious subjects is given, at any meeting of the school for elementary instruction, shall be either at the beginning or the end, or at the beginning and at the end of such meeting, and shall be specified in a table approved of by the Scotch Educational Department.”

But it would never be contended that such public schools were denominational schools, because they admitted of religious instruction with a conscience clause.

In this province the term denominational schools has always heretofore been applied to specific schools controlled by a denomination, in which the public, as such, had no rights or interest. These schools stood outside of the general public system, and from time to time their managers, in admission and full recognition of their anomalous position, made application to the legislature for specific yearly appropriations from the revenue, and over these schools there was no public control or right of inspection.

It is also worth while to inquire what is understood to be denominational schools by the church in whose interests the present reference is made. In a Pastoral Address of the Catholic Archbishop and Bishops of Ireland, dated at Dublin the 20th October, 1871, it is said :—

“As to primary education, therefore, we demand—1st. For all schools which are exclusively Catholic, the removal of all restrictions upon religious instructions, so that the fulness of distinctive religious teaching may enter into the course of daily secular education, with full liberty for the use of Catholic books and religious emblems, and for the performance of religious exercises, and that the right be recognized of the lawful pastors of the children in such schools to have access to them, to regulate the whole business of religious instruction in them, and to remove objectionable books, if any. In such schools the teachers, the books and the inspectors shall all be Catholic.”

Again, in the province of Ontario, a system of public schools has existed for about twenty years. These schools not having met the requirements of the Roman Catholic clergy, they broke away from the public school system, and procured the establishment, by law, of the “separate” schools referred to subsections 2 and 3 of section 93, of the British North America Act, 1867.

On the 1st of last January, the Roman Catholic Bishop of London, Ontario, issued a pastoral, which concluded as follows :—

“We have endeavoured to point out the importance of Catholic education and the danger that result from an unchristian education. We have shown that the education imparted in the common schools of Ontario cannot be religious for the simple reason that it cannot, in justice to all sects, be denominational. We have pointed out the

duty of our clergy and of our Catholic parents on this subject, and we earnestly exhort them to be faithful to it. To ensure the efficient working of our separate school system, we, having invoked the holy name of God, deem it our duty to ordain as follows :—

“Art. 1. No Catholic parent living within the legal limits of a separate school shall send his children to mixed or common schools, they being adjudged by the Canadian hierarchy as dangerous to faith and morals. Should any Catholic parent unfortunately persist in violating this ordinance, he shall be refused the Holy Sacraments until such time as they shall consent to obey the Church in this matter.

“Art. 2. Every Catholic ratepayer, living within the legal limits of a separate school, shall pay his school taxes to said school, under a penalty of being refused the Holy Sacraments. If, for grave and special reasons, exemption should be claimed from these ordinances, let the pastor, and if necessary, the bishop, be consulted, and their directions followed.

“We hereby renew the wise ordinance of our predecessor :—

“Art. 1. In any school section whose trustees are Catholics, no other than a practical Catholic shall be chosen to fulfil the duties of a teacher, whether male or female.

“Art. 2. The school trustees are to consult their respective pastors in regard to the appointment or dismissal of the said teachers, as well as in all that concerns the general good of the parochial schools.

“Art. 3. In case of a dissent between the pastor and the trustees in this matter, recourse shall be had to the bishop, who, after hearing both sides, will give a decision, which shall be final.

“Art. 4. Inasmuch as any school, established and maintained in opposition to these rules, can no longer be considered as Catholic, the pastor, after consulting the bishop, will forbid parents to support said schools, or to send their children thither.”

Now, what is the character of the schools, to attend which, as dangerous to faith and morals, subjects the offender to the refusal of the Sacraments? They are schools in which, by the 129th section of the Consolidated Common Schools Act of Upper Canada, 22 Vic., cap. 61, it is provided, almost in the language of the New Brunswick Parish School Act of 1858, that—

“No person shall require any pupil in any such school to read or study in or from any religious book, or to join in any exercise of devotion or religion objected to by his or her parents or guardians; but within this limitation, pupils shall be allowed to receive such religious instruction as their parents and guardians desire, according to any religious regulations provided for the government of common schools.

And by regulation 5 of the regulations made by the board of education under such Act, it is provided that the teacher “shall daily exert his best endeavours, by example and precept, to impress upon the minds of pupils the principles and morals of the Christian religion, especially those virtues of piety, truth, patriotism and humanity, which are the bases of law and freedom, and the cement and ornament of society.”

It is with reference to such schools that the Bishop of London says, that the education therein imparted cannot be religious, for the simple reason that it cannot, in justice to all sects, be denominational.

Inasmuch, then, as in New Brunswick, at the union, and at the time of the passing of the Common Schools Act, 1871, the Roman Catholics had, by law, no rights or privileges with respect to denominational schools, nothing in the Common Schools Act can have deprived them of rights or privileges which they did not previously enjoy. The effect of the Common Schools Act was to repeal the Parish School Act of 1858, and the amendments thereof; to alter the distribution of power between the local and general authorities; to substitute a system of rate-supported schools for a system of schools supported either by rates or voluntary subscription. On the question of religious teaching it preserves silence,—neither excluding the Bible from the school, or legislating it into the school; neither requiring nor prohibiting the inculcation of the principles of Christianity in their non-denominational features; neither prescribing nor proscribing



such religious instruction, but simply providing that the schools should not be turned to sectarian purposes.

In this connection the Executive Council would refer to some of the allegations of the petition of Rev. C. Lefebvre and others, set out in paragraph 4 of the case.

It is there stated that under the school law in force at the union, and up to the passing of the Common Schools Act, 1871, the Catholics were enabled, wherever their numbers were sufficiently large, to establish schools, in which a good religious and secular education was afforded.

No such right existed "under the law;" nothing in the Parish School Act of 1858 prevented the establishment of private schools outside of the law, as nothing in the Common Schools Act, 1871, prevents the establishment of similar schools. An irregular and defective administration of the law might tolerate illegal practices, and allow parties to derive unwarrantable advantages in violation of the law; but privileges enjoyed in violation of the law cannot give rights under the law. For example:—The Executive Council does indeed find that, at one time, certain of the branches of the Madras school, a denominational school existing by special Act, and under special control, inconsistent with the public control provided for by the Parish School Act of 1858, did, whilst receiving specific pecuniary grants yearly, voted by the House of Assembly in aid of special schools, also receive the allowances from the provincial treasury secured by the Parish School Act of 1878 to the teachers of parish schools, the same having been improperly recognized by the local trustees and school committees as a parish school. But this imperfect administration of the law has never been, by the governor and the trustees of the Madras school, claimed to give a legal status under the law. It was an irregularity which the law was of itself sufficient to check.

It is also stated:—"That in districts in which Catholics were too few in numbers to maintain separate schools"—a term never known in this province as applied to the schools of New Brunswick—"they could not be compelled to contribute to the support of any schools in which they had reason to apprehend that anything would be done to sap the faith or weaken the religious convictions of their children, and that this afforded them a safeguard and protection which the Act lately passed will wholly destroy."

And, in the same petition, the injurious operation of the Common Schools Act, 1871, is thus described:—

"That in the several school districts into which the counties are to be divided, other sums are to be raised for school purposes, and the determination of the amount and of the mode of expenditure, the appointment of trustees, and all that concerns the management of the schools, are vested absolutely in the majority, thus, by process of law, depriving your petitioners, who, in the most instances, are in the minority, of all rights and all the protection of the law."

Nothing could more clearly mark the confusion of mind into which the petitioners have fallen.

For, under the Parish School Act of 1858, as well as under the Common School Act, 1871, the districts into which the counties were divided had the power of raising school money by assessment, and determining the amount and the mode of expenditure; and all that concerned the management of the schools was vested absolutely in the majority. Thus, in the language of the petition, "depriving the petitioners, who, in most instances, are in the minority, of all rights, and all the protection of the law."

Under the Common Schools Act, 1871, this power of the majority cannot be used to compel the minority to support schools, in which the distinctive doctrines of any sect may be taught.

But if the contention of those be correct who maintain that the Parish School Act of 1858 provided for denominational schools, or legalized denominational teaching, the power of the majority could, under that Act, have been exercised to compel Catholics to contribute to the extension of Protestant doctrines. This, in the words of the petition, "depriving Catholics, who, in most instances, are in the minority, of all rights and all protection of the law."



If, as alleged, Catholics could not, under the Parish School Act of 1858, be compelled to contribute to the support of any schools in which they had reason to apprehend that anything would be done to sap the faith, or weaken the religious convictions of their children, it could be only the supposition that that Act which gave to the majority the power of ordering assessment, did not admit of denominational schools being established under its provisions.

It is thus evident that the Common Schools Act, 1871, so far from prejudicially affecting the right of Catholics, secures them against the possibility of hostile action of the Protestant majority, and that no more dreadful consequence could fall upon the Roman Catholics, who are one-third the population, than the re-enactment of the Parish School Act, with the interpretation sought to be placed upon it, of legalizing the establishment of denominational schools, or the teaching of sectarian theology.

Another objection to the Common Schools Act is, that it deprives Catholic graded schools, in the cities and large towns, of pecuniary legislative grants.

The answer to this is, briefly—

(1.) That such grants were not secured by law, but were simply annual votes passed in supply, in aid of special schools.

(2.) That the Common Schools Act, 1871, does not seek to restrict the right and power of the House of Assembly to dispose of the public funds as may, from time to time, think proper.

The second general question involved in the resolutions of the House of Commons, relates to the extent of the power of the Parliament of Canada to pass remedial laws in reference to education.

If the foregoing remarks, in respect of the power of the legislature of New Brunswick to pass the Common Schools Act, 1871, be correct, and, if there be nothing in that Act contravening the provisions of section 93 of the British North America Act, 1867, it is evident that the Parliament of Canada can have no right of legislation in the matter, remedial or otherwise.

But the Executive Council are not prepared to admit that the Parliament of Canada would, in any event, have legislative jurisdiction. An examination of section 93 would appear to show that the power of the Parliament of Canada does in no way extend beyond the matters specifically referred to in subsections 2 and 3.

Subsection 1 is a general abstract provision in limitation of the general grant of legislative powers given to the local legislatures in the matter of education. It is a general saving clause, under which the rights of the Roman Catholic and Protestant minorities in Ontario and Quebec, in respect of their separate and dissentient schools, are saved; whilst for greater caution, being extended to cover similar rights in any of the provinces, should such exist. It is the generalized expression of the following provision of the Quebec scheme, before alluded to:—

“(6.) Education, saving the rights and privileges which the Protestant or Roman Catholic minority in both Canadas may possess, as to their denominational schools, at the time when the union goes into operation;” which Quebec scheme having been the basis of the desire for union, referred to in the preamble of “The British North America Act, 1867,” may be looked to for light in the interpretation of the latter Act.

Now, the effect of this general saving clause is, that it shall be read in every Act of the several local legislatures respecting education. It is the same as if such words were expressly inserted by way of proviso in every such Act; and so far, and only so far, as the rights thereby secured are prejudicially affected by provincial legislation, the Act becomes inoperative and devoid of force of law. Those rights continue as before unaffected by any legislation, and the courts will uphold such rights in the same manner as if they were expressly saved by such legislation.

It is to be further noted, that the provision is negative and restraining. It does not require the legislature to enact laws for the preservation of the rights referred to; it simply requires that the legislatures shall not in certain cases make laws, and provides that if they do, their legislation shall be *ultra vires*, or at least that it shall not operate to affect certain objects.

Subsection 2 on the other hand, grants certain rights to the minorities in Quebec, and therefore imposes impliedly on the legislature of that province, the duty of executing such provision.

Subsection 3 provides a remedy by appeal to the Governor General in Council from any Act or decision of any provincial authority, affecting any right or privilege of the Protestant or Catholic minority in relation to education in any province, wherein separate schools exist by law (whether at the union or subsequently established). Here it is to be observed that the words "act or decision of a provincial authority," rather seem to point to matters of administration, as, for instance, to the acts or decision of executive authority, or the board of education.

Subsection 4 vests certain powers of passing remedial laws in the Parliament of Canada. But it is to be noted that this power is given in but two cases—

1st. Where any provincial law, as seems to the Governor General requisite for the due execution of the provisions of the section, is not made; and

2nd. Where any decision of the Governor General in Council on any appeal under the section is not duly executed by the proper provincial authority in that behalf.

Taking the second branch of the power first: it gives the right of legislation where the decision of the Governor General in Council on appeal is not duly executed by the proper provincial authority; but the jurisdiction of the the Governor General on appeal is limited to cases arising under subsection 3.

The other branch of the power is where the provincial legislature has made default in passing the requisite legislation for the due execution of the provisions of the section.

This is clearly applicable only to subsection 2, under which something is required to be executed. The minority in Quebec is thereby vested with certain rights, and the duty cast upon the legislature of that province to pass the necessary legislation to effectuate the object; in order words, provincial law becomes necessary for its execution. But the words are not applicable to sub-section 1, by which provincial legislatures are not required to act, but are forbidden from acting, and by which the legislation of the local legislatures is, to the extent that it contravenes the provisions of sub-section 1, entirely inoperative and of no force of law, being to that extent *ultra vires* and unconstitutional.

Nor does it impair the force of this, that the power of parliament is not expressly limited to cases under subsections 2 and 3, but extends to the section, because the section is in its nature entire; and the same extended reference is made to the "section," in the case of the failure to execute the appeal of the Governor General in Council, as in the case of the failure to have the requisite legislation. The words in the one case are: "any decision of the Governor General in Council on any appeal under this section." But it is clear that the appeal only lies under subsection 3, and the word "section" there means that part of the section to which the case is properly referable.

In short, the power of legislation is in the Parliament of Canada in two cases; the case where appeal lies to the Governor General in Council, under sub-section 3, and the case where something which is required to be executed is not executed, as under subsection 2. The provisions of subsection 1 do not require execution, or the passage of any provincial law to execute them. They execute themselves, and subject all provincial laws in their operation. No remedy is needed, because no wrong can be inflicted; they lie in the protection of the law. But as in the system of denominational schools, such as those of Ontario and Quebec, provincial authorities may by act or decision, interfere with rights or privileges, the section makes provision under subsection 3, for such cases of injurious administration, act, or decision.

The Executive Council would further observe, that while the subject was under discussion by the House of Commons, and before the adoption of the resolution of the 30th May, they, on the 29th May last, caused to be transmitted by telegraph to the Privy Council of Canada, the Minute of Council, of which a copy is hereunto annexed, marked A, by which it will be seen that the government of New Brunswick, on behalf of the people in that province, entered their most earnest protest against any dealing with the Common Schools Act, 1871, by the Parliament of Canada.



The Executive Council in making the foregoing remarks, do not desire it to be understood that they are assenting parties to the submission to the opinion of the law officers of the Crown in England, of the right of the New Brunswick legislature exclusively to deal with the subject of education; on the contrary, they most respectfully now enter their protest against any such submission; and while they entertain that just respect which should properly be accorded to any opinion on the subject emanating from such distinguished lawyers, they foresee the great danger as likely to arise from such a course.

The question, whether the Common Schools Act, 1871, is *ultra vires* within the intent and meaning of the 93rd section of the British North America Act, 1867, is at present pending in the Supreme Court of New Brunswick, and the parties in whose interest it is now sought to obtain the opinion of the law officers of the Crown, have had their view, with all the facts, presented and argued before the Supreme Court by some of the ablest gentlemen of the Bar in New Brunswick. The decision and judgment of the Supreme Court will be given in Hilary Term (February) next, and as an appeal from such judgment will lie to the Judicial Committee of the Privy Council, it does appear to the Executive Council that any opinion that the law officers of the Crown may give, can in no way settle the question; for should the opinion of the law officers of the Crown differ from the judgment of the Supreme Court, neither the legislature nor the courts of New Brunswick would feel bound by such opinion. And, again, were the opinion of the law officers so differing, such as to lead the Dominion Parliament to legislate upon the subject, any such law of the Dominion Parliament might, by the New Brunswick courts, be held to be *ultra vires*.

The Supreme Court of New Brunswick, in the case of the *Queen vs. Chandler*, 1 Hannay's Report, p. 548, having held that—

“An Act passed by the legislature of New Brunswick, on the 23rd March, 1868, intitled: An Act in amendment of chapter 124, title 34, of the Revised Statutes. ‘Of Insolvent Confined Debtors,’ was an insolvent Act which the legislature of New Brunswick had no power to pass since the British North America Act, 1867, came into force, and was, therefore, invalid and void; the Parliament of Canada having, under the imperial statute, the exclusive power to legislate on bankruptcy and insolvency; and that the assent of the Governor General to such provincial Act would not make it valid; the court holding that where an Act of the local legislature conflicts with the British North America Act (it being an imperial statute) the court will pronounce upon its validity;”

they may, and no doubt would, equally hold as *ultra vires* any legislation of the Dominion Parliament interfering with the exclusive power of the New Brunswick legislature to legislate on the subject, with the sole limitation mentioned in the 1st sub-section, section 93, British North America Act; and thus if the Common Schools Acts; 1871, be determined by the Supreme Court to be not *ultra vires*, it is clear an Act passed by the Parliament of Canada on the subject, upon the assumption that it is so, would be necessarily of no force or effect.

Entertaining the strongest view possible of the Common Schools Act, 1871, the Executive Council would regret to see such a conflict of law as would arise, should the Supreme Court uphold that view, and the law officers of the Crown arrive at a conclusion, and they see, as the only legal and constitutional determination of the question, an appeal to the Judicial Committee of the Privy Council, from the judgment of the court, by the dissatisfied parties.

Any other course that this will not prove satisfactory to the people of New Brunswick, and in no other, and by no other judgment, will they permit their rights in the matter of the Act in question, to be settled.



## A

IN COUNCIL, 29TH MAY, 1872.

The Executive Council in committee have observed the introduction into the House of Commons of Canada, of a resolution that an address be presented to Her Majesty, praying that she will be pleased to cause an Act to be passed amending the British North America Act, 1867, in the sense in which the House of Commons believes to have been intended at the time of the passage of the said Act, by providing that every religious denomination in the provinces of New Brunswick and Nova Scotia shall continue to possess all such rights, advantages and privileges with regard to their schools, as such denomination enjoyed in such province at the time of the passage of the said last-mentioned Act, to the same extent as if such rights, advantages and privileges had been duly established by law.

The avowed object of such resolution is the overthrow of the recent legislation of New Brunswick relating to common schools, which legislation is admittedly within the powers of the legislature of this province under the constitution as it exists.

Upon the question of fact embodied in the resolution, the committee beg to say that in none of the discussions and negotiations publicly carried on previous to the union, was it regarded by any parties in this province, that the then existing legislation upon the subject of education, partook in any respect of the character of finality, or conferred vested rights upon any class, nor did any portion of the people of New Brunswick openly seek to secure permanence or continuance of such legislation and procedure. There had not been in this province, as in some of the other provinces, any legislative compromise on the question of denominational education, and the people of New Brunswick would certainly have repudiated any arrangement which sought to limit their freedom of action.

It appears to have been reserved for the representation of other provinces of the Dominion to discover that the assumed privileges of a certain portion of the people of New Brunswick were intended to be secured to a greater extent, than was by them at the time supposed or intended.

It is now proposed that the powers of the provincial legislatures shall be determined, not by the language of the constitution, but according to the sense which is believed to have been intended by a body that at the time of the passage of the Act had no existence, and from which in this case the constitution expressly withdraws the power of legislation.

The committee, desirous of preserving the union, cannot refrain from drawing the attention of the Government and Parliament of Canada to the alarming character and consequence of the above resolution. Those consequences far outweigh in importance the particular subject involved. The assumption, by the Government and Parliament of Canada, of the right to seek the imposition of further limitations of the union, tending to the destruction of the powers and independence of the provincial legislatures, and to the centralization of all power in the Parliament of Canada.

The people of New Brunswick cannot and will not so surrender their rights of self-government within the limits of the constitution, and will regard the passage of such resolution as an infringement of the constitution, by those whose duty and interest should lead them to uphold the rights of the provinces, while maintaining the powers of the general government.

The Executive Council in committee therefore hasten to warn the government and Parliament of Canada of the danger involved in the passage of the said resolution, which, if passed, whatever its effect upon the course of the imperial legislation, must stand as a precedent of innovation of provincial rights, fruitful of evil; and in the name of the people of New Brunswick, and invoking the protection of the constitution, the Executive Council in Committee protest against the passage of such resolution, and emphatically assert the right of the legislature of New Brunswick to legislate upon all questions affecting the education of the country, free from interference by the Parliament of Canada.

*Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 10th January, 1873.*

The committee have had under consideration the despatch No. 97, dated 31st December, 1872, from the Lieutenant-Governor of New Brunswick, inclosing copy of a minute of his Executive Council, on the case submitted by the Dominion Government for the consideration of the Crown officers in England, on the New Brunswick School Act of 1871, and requesting that the same may be laid before your Excellency, for transmission to the Right Honourable the Secretary of State for the Colonies, to be submitted to the Crown officers.

The committee advise that your Excellency will be pleased to transmit the minute in question to the Earl of Kimberly to be laid before the Crown officers, as requested.

Certified.

W. A. HIMSWORTH,  
*Clerk, Privy Council.*

*Bishop Sweeney to the Hon. the Secretary of State.*

CATHEDRAL OF THE IMMACULATE CONCEPTION,

ST. JOHN, N.B., 18th January, 1873.

SIR,—I beg to forward the inclosed printed papers containing the opinions of Charles Duff and C. W. Weldon, Esquire, legal gentlemen of high standing in their profession, regarding the school law of New Brunswick, lately passed by our local legislature, and also statistics to show that the Catholics have been deprived, by this law, of privileges—the right to give religious instructions in the schools, to establish Catholic schools, &c.,—which they enjoyed, and exercised freely under the former school laws of the province.

I send these papers in accordance with the report of the committee of the Honourable the Privy Council, approved by his Excellency the Governor General on the 6th November, 1872, in order that they may be transmitted to England with the report of the Honourable the Minister of Justice. I have been obliged to delay longer than I had intended sending in these documents, on account of the stormy weather of the past month, and the difficulty, in consequence, of communicating with distant localities.

I beg most respectfully to request that this question, so important to the Catholics of New Brunswick, may be brought before the Judicial Committee of Her Majesty's Privy Council, and, if possible, to be informed when it may be brought before them, in order that we may have the opportunity of employing counsel in England to represent us.

I have, &c.,

† J. SWEENEY,  
*Bishop of St. John.*

*Opinion of Messrs. Chas. Duff and C. W. Weldon.*

ST. JOHN, N.B., 6th January, 1893.

To the Right Rev. JOHN SWEENEY, D.D., Bishop of St. John, N.B. :

YOUR LORDSHIP,—Agreeably to your Lordship's wish, we have perused the copy of a report of the Honourable the Minister of Justice, dated 30th October, 1872, submitting,

in accordance with the resolution adopted by the House of Commons, on the 30th May last, a statement for transmission to Her Majesty's Secretary of State for the Colonies, in order that the opinion of the law officers of the Crown in England, and, if possible, the opinion of the Judicial Committee of the Privy Council, might be obtained as to the right of the New Brunswick legislature to make such changes in the school law, as deprived Roman Catholics of the privileges which they enjoyed at the time of the union, in respect of religious education in the common schools, with the view of ascertaining whether the case comes within the terms of the 4th subsection of the 93rd clause of the "British North America Act, 1867." We have also read the copy of the report of the committee of the Honourable the Privy Council thereon, of the 6th November, 1872, advising that it should be submitted by his Excellency the Governor General to the Right Honourable the Secretary of State for the Colonies; and that copies of it should be forwarded to the lieutenant-governor of the province, and to your Lordship, for any remarks which the lieutenant-governor or your Lordship might think proper to make thereon, and that your Lordship might desire should be transmitted therewith to the Right Honourable the Secretary of State for the Colonies.

The statement of the Honourable the Minister of Justice sets forth:—1st. The resolution of the 30th May, 1877. 2nd. The 93rd clause of the British North America Act, 1867. 3rd. The Common Schools Act, 1871. 4th. The petition of the Roman Catholic hierarchy, clergy and laity of this province to his Excellency the Governor General, praying that "the Common Schools Act, 1871," might be disallowed, as affecting and diminishing the educational privileges which the Roman Catholics enjoyed in this province at the time of the union; the reply of the Under Secretary of State for the Colonies thereto; an extract from a report of the Honourable the Minister of Justice upon the petition, dated 20th January, 1872, advising that "the Common Schools Act, 1871," should be allowed to go into operation; a correspondence between the Reverend James Quinn and the Governor General's Secretary. 5th. Copies of various Acts of the province of New Brunswick which were in existence at the time of the union, and which were repealed by the Common Schools Act, 1871. 6th. The proceedings in the House of Commons on the 21st, 22nd and 29th May, 1872.

Involved in this statement, and altogether behind the question arising out of the resolution of 30th May, 1872, is the correction of the opinion given by the Honourable the Minister of Justice in his report of the 20th May, 1872. Of course, your Lordship is not prepared to regard that opinion as conclusive, so far as relation to the *constitutionality* of the Common Schools Act, 1871. In the event of its being decided that this is a case for the intervention of the Dominion Parliament, under subsection 4, there is no doubt that the Roman Catholics of the province may safely leave the protection of their rights and privileges to that Parliament; but should the Judicial Committee be of a contrary opinion, then another, and, in a constitutional point of view, a not less important question remains to be decided, viz., whether it is not covered by subsection 1.

According to the opinion of the Honourable the Minister of Justice, the high respect which any legal opinion of his is always entitled to receive, we cannot help thinking that the one which he gave in his report of the 20th January, 1872, so far as it relates to the constitutionality of "the Common Schools Act, 1871," is erroneous. He says:—"The provincial legislatures have exclusive powers to make laws in relation to education, subject to the provisions of the 93rd clause of the British North America Act. These provisions apply exclusively to the *denominational*, separate or dissentient schools, they do not in any way affect or lessen the power of such provincial legislatures to pass laws respecting the *general educational system of the province*. The Act complained of is an Act relating to common schools, and the Acts repealed by it apply to parish, grammar, superior and common schools. No reference is made in them to separate, dissentient or denominational schools, and the undersigned does not, on examination, find that any statute of the province exists establishing such special schools. As, therefore, the Act applies to the whole school system of New Brunswick, and is not especially applicable to denominational schools, the Governor General has, in the opinion of the undersigned, no right to intervene."



The 93rd clause of the British North America Act gives the local legislatures power exclusively to make laws in relation to education, provided those laws do not "prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law in the province at the union." Is not this a qualification of the power of the local legislature to make "laws respecting the general educational system of the province"? If it should pass a law respecting "the general educational system of the province," any of the provisions of which did "prejudicially affect" any such right or privilege, would not that law, or its provisions to the extent to which they affected such privileges, be *ultra vires* and void? If not, the first subsection would seem to be entirely inoperative.

It may be difficult to define, with certainty, what the imperial legislature meant in the 1st subsection; but surely the Minister of Justice is in error when he assumes that they intended to use the word "denominational" there as synonymous, or rather as corresponding with the terms "separate" and "dissentient" in the other subsections. If such had been their intention, one would expect to find it associated with these terms in the 3rd subsection, but it is not. The fact that it is not so associated with these words there, affords a strong, if not a conclusive argument, that it ought not to be associated with them at all. The legislature has not placed them in the same category, and what right have we to do so?

The word "denominational" itself is of modern invention; it is not to be found in Johnson and Walker's Dictionary. In the Imperial Dictionary it is defined as "of or pertaining to a denomination." When we find it, as here, in the same clause with "separate" and "dissentient," we must conclude that it was intended to convey a meaning *somewhat different* from either of these words, or that it was meant to be applied to a different state of circumstances, else why is it used at all? In the 2nd subsection, the words "separate" and "dissentient" are applied to the schools of the Roman Catholic minority in Upper Canada, and those of the Protestant minority in Lower Canada. In both these provinces the schools of the minority are separate schools. In Upper Canada they are designated *eo nomino* (Consolidated Acts of Upper Canada, p. 768, 22 Vic., c. 65); in Lower Canada they are called "dissentient" (*vide* Consolidated Acts, Lower Canada, p. 61). These terms in that subsection are both used to signify schools which are under the separate and exclusive control of the Roman Catholics or the Protestants respectively, as the case might be, and they are not confined in their application to the provinces of old Canada. By the 3rd subsection they are made applicable to any school of a similar character which might then be in existence, or which might thereafter be established *in any province of the union*. If the Roman Catholics had a system of *separate* schools established by law, in this province or in Nova Scotia at the time of the union, they are comprehended within the 3rd subsection beyond a doubt; and unless the first was intended to apply to a different description of schools, there was no necessity for inserting it in the Act at all. By every rule of construction, it seems to us that the word "denominational" in this connection, must be taken to refer to schools, not of the same exclusive character as the separate schools of Upper Canada, but which shall yet possess something "pertaining to denominations." Would there be nothing "pertaining to denominations" in schools where, whilst the Bible is read, the conscientious scruples of each denomination are respected? Schools of this kind would not be separate—would not be dissentient, but they would surely be denominational. We are at a loss to conceive what schools could exist, possessing features "pertaining to denominations" and which would *not be separate* schools unless they are of this mixed kind where denominational teaching is recognized and protected. In Quebec and Ontario the rights of Protestants and Catholics in these respects are amply protected and secured by the 2nd and 3rd subsections. In Nova Scotia there is no section of schools to which the language of either section could be applied, but, in this province, the Act 21 Vic., c. 9 (1858), secured to Roman Catholics a denominational right precisely of this kind. That Act regulated the common schools (in the Act itself very inappropriately called *parish* schools), at the time of the union.

By the 8th section it is, amongst other things, enacted "That every teacher shall take diligent care, and exert his best exertions to impress on the minds of the children

committed to his care the *principles of Christianity*, morality, &c., &c. ; but no pupil shall be required to read or study from any *religious book*, or join in any *act of devotion* objected to by his parents or guardians, and the board of education shall, by regulations, *secure to all children, whose parents or guardians do not object to it, the reading of the Bible in parish schools* ; and the Bible, when read in parish schools by Roman Catholic children, shall, if required by the parents or guardians, be the *Douay version*, without note or comment."

This section secures the teaching of *Christianity* to all ; it *secures the reading of the Bible* in the schools to all who do not expressly object ; it *secures* to the children of Roman Catholics the *Douay version*. It does more, it sanctions the use of religious books and acts of devotion by all pupils whose parents do not object to them. Can it be said that there is nothing "pertaining to denomination" in schools established under this section ? In any school established under this Act, at which the children of both Protestant and Roman Catholic parents attended, the conscientious scruples of each denomination would be protected, and thus whilst it would not be separate, it would be denominational. In schools of this mixed character, it would be difficult, if not impossible, to give a right of appeal to every alleged violation of the rights of a pupil, such as given by the 3rd subsection, where separate and dissentient schools exist, and therefore we do not find the denominational classed with the separate and dissentient schools in that section, as they most certainly would have been, if they possessed the same exclusive character, and were under the exclusive control of either denomination. Furthermore, the rights of the minorities in these schools were a *negative* rather than a positive character. The parents may *object* to the Bible being read, or to any but the *Douay version*, or they may *object* to religious books or to acts of devotion. If they do not object, either version of the Bible must be read, and any religious book may be read, or any acts of devotion may be performed. So, in the British North America Act, 1867, the difference there in the phraseology of the 1st from that of the 2nd, 3rd, and 4th subsections is marked and significant. The former is negative ; the latter are affirmative. If the 1st subsection had been framed expressly with a view to protect rights of the peculiar kind possessed by Roman Catholics in the schools of this province, it would be difficult to find language more appropriate for the purpose.

From another point of view, the language of that subsection is singularly appropriate to the rights enjoyed at the time of the union by Roman Catholics in this province, in connection with the common schools then established, arising out of local circumstances. It will be observed that it is not merely a system of *denominational* schools, as it is a *system* of separate or dissentient schools in the context, which is protected by this subsection. The Minister of Justice has indeed so read it ; but we respectfully submit that he is wrong. It cannot possibly be so read. It is a right or privilege in respect of "denominational schools," and not a system of *denominational* schools which is spoken of. Such a right might exist, to be asserted under certain conditions, and yet no *system* of denominational schools be established by the Act itself. If the law gave to the Roman Catholics a right to call into existence schools exclusively of their own denomination, under certain conditions of time or place or otherwise, then that would be a right or privilege in respect of denominational schools, which they possessed under the law, even although they had never exerted it. The right would be the same, whether exerted or not, and even if no opportunity had occurred for availing themselves of it.

This right the Roman Catholics had under the Act of 1858, and the 6th section of that Act provides for the election of trustees of schools, and for the division of their respective parishes "into convenient school districts." It requires them to "give any licensed teacher authority, in writing, to open a school in a district where the inhabitants have provided a sufficient school house, secured the necessary salary, and with their assent agreed with such teacher." It empowers the trustees to "suspend or displace any teacher" for improper conduct, &c., and directs them, in such case, "to transmit a copy of their proceedings for the decision of the board." It requires them to call a meeting of the rate-payers of the district for the purpose of electing a school committee ; and in towns or populous districts, the trustees may authorize "such



number of schools as the wants of the population may require. The 7th section provides for the election of the school committee by the rate-payers of the school district, and it gives this committee, when elected, the immediate charge of the school house, the control of the library, and of the appropriation of moneys raised in the district for the purpose of providing a library, subject, of course, to the provisions of the 8th paragraph of the 4th section, which excludes work of a licentious, vicious, or immoral tendency, or hostile to the Christian religion, and works on controversial (but not dogmatic) theology.

In many parts of this province, as your Lordship is well aware, the Roman Catholics largely preponderate and in some they constitute the entire population. In the latter places they elected trustees and school committees, "provided sufficient school houses," "secured the necessary salary," and employed teachers. In such places trustees, committees, teachers, parents and pupils were all Roman Catholics, the Douay Bible alone was used, and the religious books and acts of devotion were generally the same as those employed in the separate schools in Upper Canada and in the schools (not dissentient) of Lower Canada. These schools were established and were lawfully in existence at the time of the union, under the Act of 1858; the teachers in them were appointed, and made their returns under the Act, and they received their share of the provincial allowance under it.

Again, "in towns and populous places" the trustees had established schools which were exclusively Roman Catholic, and they had done so strictly in accordance with the provisions of the law, which empowered them in such cases to establish "such number of schools as the wants of the population might require." All these schools were established and governed in every respect in accordance with the provisions of the Act of 1858, and they were returned by the superintendent of education in his annual report as parish, or, more appropriately, common schools. In one instance, a teacher of a school of this kind was dismissed by the trustees, under the 6th section, for improper conduct, and his dismissal having been duly reported was approved of by the board of education; the improper conduct being a refusal to use the Roman Catholic Catechism in his school.

By the return of the superintendent of education for the year 1870, there were 825 common schools or parish schools in the province receiving the provincial allowance under the Act of 1858, and of that number so returned by him, upwards of 250 were exclusively Roman Catholic.

The right thus to establish schools composed exclusively of Roman Catholic children, in localities where the population is composed exclusively of that denomination; the power given to the trustees to establish them in populous districts; the protection afforded to the conscientious scruples of the minority in mixed schools where all "rights and privileges" in respect to denominational schools which the Roman Catholics of this province had, as a class, by law at the time of the union, was established.

It has been urged by some of the advocates of "the Common Schools Act, 1871" (but certainly not by the Minister of Justice), that the denominational rights and privileges mentioned in the first sub-section, refer only to such corporate privileges as have been conferred upon institutions like the Wesleyan Academy at Sackville, the Acadia College in Nova Scotia, or the McGill College in Montreal, belonging respectively to the Wesleyan, Baptist and Presbyterian denominations. This argument does not commend itself to our minds as of any weight. The institutions referred to are not common schools in any sense of the term. They confer degrees, they have courses of lectures, and their whole system of teaching is different. The Act of the Imperial Parliament, 31 and 32 Victoria, cap. 118, makes provisions for the good government and extension of certain public schools in England, and it was deemed necessary, in order to include Eton and Winchester colleges, specially to name them.

The Dartmouth College case, 4 Wheaton, U. S. Reports, is an authority to the effect that corporations of such a character as these, form no part of the general educational or common school system of the country. Whatever aid they received from the province, moreover, was in the shape of annual grants, to which they had no vested rights, and which the legislature might at any time refuse to make. And it was not the different



Protestant denominations which were referred to at all. There is nothing in the context of the British North America Act, 1867, to give the slightest colour of support to such an argument. Christians, in the 93rd section, are divided into two great classes, the same into which all Christendom have been divided for centuries, the Roman Catholic and Protestant. The manifest design of the section is in accordance with all modern British legislation—to protect the minority from the encroachments of the majority.

The same division of classes is to be found in the 8th section of the Act of 1858. It is the Protestant Bible on the one hand, and the Douay version on the other. It is not Methodist, or Baptist, or Presbyterian. Therefore, whether we construe the first subsection by the context, by the light of contemporary legislation, or by the circumstances and position of affairs in the province, to which the law was to be applied, the conclusion is the same—the Roman Catholics and the Protestants are the only classes of persons before the minds of the legislature.

The "Common Schools Act, 1871," repeals the Act of 1858, and thereby deprives Roman Catholics not only of the right which that Act secured to them of having the Douay bible read by their children in the mixed schools, but also the privilege which they had under it, of creating schools of a character exclusively Roman Catholic, where the population was entirely Roman Catholic, and deprives the trustees of the authority which they formerly had of establishing Roman Catholic schools in populous places. The 60th section of the act of 1871 enacts, that "all schools conducted under the provisions of the Act shall be non-sectarian." This emphatically prevents the use of the Douay Bible, or of the Catholic catechism, or of religious books, or the performance of any acts of devotion. By the 58th section, subsection 12, it is enacted that "*no public funds shall be granted in support of any school, unless the same be a free school, and conducted in every respect in conformity with this Act and the regulations of the board of education*;" and this deprives the Roman Catholics of the provincial allowance which was secured to them by the Act of 1858, when they complied with its conditions. Moreover, it is under the provisions of the Act of 1871 that the board of education derives the authority to make, and that it has made, the following regulation:—"Regulation 20:—*Symbols or emblems in the school room.*—Symbols or emblems, distinctive of any national or other society, political party or religious organization, shall not be exhibited or employed in the school room, either in its general arrangement or exercises, or on the person of any teacher or pupil."

So long as the Act of 1858 continued to be law, the board would not have dared to promulgate such a regulation. Catholics were secured against any such outrage by the Act. The board, moreover, had no power under the Act of 1858 even to *prescribe* the books to be used in schools. We are, therefore, constrained to say that, in our opinion, the "Common Schools Act, 1871," does "prejudicially affect" rights and privileges which were secured to the Roman Catholics of this province, as a class, in respect of denominational schools.

We observe that Mr. Colby's resolution and the report of the Honourable the Minister of Justice both contemplate taking the opinion of the law officers of the Crown in the matter, and if possible, the opinion of the Judicial Committee of the Privy Council. In a matter involving a great constitutional question, and affecting the whole Roman Catholic population of the province, your Lordship will not, of course, allow their rights to be concluded or compromised by assenting to take the opinion of the law officers of the Crown as conclusive. However high the professional standing and ability of these gentlemen may be, nothing less than the opinion of the highest judicial tribunal in the country can settle such a question. And we assume that the Canadian Government are disposed to afford to the Roman Catholics of the province every facility for the settlement of the question, so far as it can be disposed of by any judicial tribunal; and if they are so disposed, we think that the opinion of the Judicial Committee can be obtained. If the report of the Minister of Justice, together with the statements of all parties, are forwarded to the Right Hon. the Secretary of State for the Colonies, through his Excellency the Governor General, accompanied by a request that the Secretary of State will lay the whole matter before the Judicial Committee to advise Her Majesty thereon, we think that the opinion of the committee can be obtained.

Her Majesty has at all times the right to require the advice of Her Privy Council and the Judicial Committee are a portion of that council.

That committee was established under the Act 3rd and 4th William IV., c. 41. The 3rd section of that Act gives the committee certain appellate jurisdiction in legal matters ; and the 4th section is as follows :—"And be it further enacted, that it shall be lawful for His Majesty to refer to the said Judicial Committee, for hearing or consideration, *any such other matter* whatsoever as *His Majesty shall think fit*, and such committee shall thereupon hear and consider the same, and shall *advise His Majesty thereon* in manner aforesaid."

Under the 3rd section, the committee exercise appellate jurisdiction ; under the 4th they will advise Her Majesty on any matter she shall "think fit to refer" to them ; and this last section has been acted upon in a great variety of cases when the Committee were not sitting as a court of appeal at all.

Amongst the matters so referred by Her Majesty to the committee for their advice, we may refer to the following :—

*In re the States of Jersey*, 11 Moore's, P.C.C. 320. This was a petition from Philip Gibaut, Esq., constable of St. John, and 1,497 ratepayers and inhabitants in the different parishes in the Island of Jersey, against an Act of the States, dated 30th April, 1850.

One objection to the Act in question arose under an Order in Council of 28th March, 1771, whereby it was ordered, "That when anything is proposed to the assembly of the States, it shall be wrote down in the form in which it is meant to be passed, and then it shall be debated ; after which it must be lodged, *au greffe*, for 14 days at least, before it shall be determined, in order that every individual of the States may have full time to consider thereof, and the constables to consult their constituents, if they judge necces ary.

The requirements of this law had not been complied with. The Act in question had not been lodged *au greffe* for fourteen days.

The Judicial Committee advised Her Majesty that the objection was fatal to the Act, and it was disallowed.

*Ramsay vs. The Justices of Sierra Leone*, 8 Moore's P. C., 47. This was a petition presented by Ramsay to the Judicial Committee, praying for leave to appeal from certain orders of the Recorder's Court of Sierra Leone, imposing fines on the petitioner for contempt of court. The court held that they had no jurisdiction to entertain a petition impugning the propriety of such orders ; but they say : "In the circumstances disclosed by this petition, if Her Majesty's Secretary of State thinks fit to refer the matter to us, we will hear it, and advise Her Majesty upon the case." Acting upon this intimation, the *appellant presented a similar petition to Her Majesty through the Colonial Office*, setting forth the same facts, and praying that such petition might be referred to the Judicial Committee.

The matter was specially referred by the Colonial Office for the consideration of the Judicial Committee to advise the Crown. The judges of the court, whose orders were appealed against, were served with a copy of the petition, and filed their answer.

Affidavits were filed on both sides in support of the respective cases. Counsel were heard on both sides, and the Judicial Committee advised Her Majesty to reduce the fines.

*In re Stronach*, 2 Moore's P. C. C. 311 (1838). This was a petition for leave to appeal against an order made by the Chief Justice of the Supreme Court of the Island of Grenada, in relation to the slaves on a certain estate, called the Grand Anse. The Colonial Act, No. 250, made in pursuance of the Slave Abolition Act, 3 and 4, William IV., c. 73, made the jurisdiction of the Chief Justice of the Supreme Court final and conclusive in such a matter. The Judicial Committee held that no appeal would lie from the order of the chief justice, and said : "We think the only course is for the petitioner to present a petition to the Crown through the Secretary of State, and then it can be referred to us generally for our opinion. We have no jurisdiction as it stands."

*In re the Island of Cape Breton*, 5 Moore's P. C. C., p. 259



"This was a petition from certain inhabitants of the Island of Cape Breton against the annexation of that island to Nova Scotia. The object of the petition was to obtain restoration of the constitution alleged to have been granted by His Majesty King George III., in 1784, and for the convening of a local legislature, under a lieutenant-governor, council, and assembly, conformably to such grant, and that the laws of Nova Scotia, and the authority of its legislature might no longer be enforced over the Island of Cape Breton."

This petition prayed, amongst other things that the constitution of 1784 should be restored to them, and for the convening of their local legislature, under a lieutenant-governor, council and assembly; but that, if there should possibly exist any doubt of the petitioners' strict legal and constitutional rights, they further prayed that, as a matter of expediency, and to protect the interests of the inhabitants of the island, and in consideration of the injuries inflicted upon them by the annexation, His Majesty would be pleased, in the exercise of his prerogative, to grant as an act of great favour, the separation of Cape Breton from Nova Scotia, and to permit the island to enjoy a similar constitution to that of its sister Island of Prince Edward, &c.

The petition was referred by Her Majesty to the Judicial Committee of the Privy Council, with directions that the petitioners should be confined in their argument before that tribunal to the bare question raised by them, and were not to be permitted to enter into any question of public convenience or policy. Notice was required to be given of the petition having been so referred, to the legislative council and house of assembly of Nova Scotia, who were authorized, if they thought fit, to appoint counsel to appear on their behalf, and oppose the claim of the petitioners.

The legislature of Nova Scotia, having been specially summoned by the lieutenant-governor in consequence of such notice having been given, declined to appoint an agent or to instruct counsel to represent them at the Bar of the Judicial Committee, expressing their confidence in the learning and ability of the officers of the Crown, and the integrity and wisdom of the eminent tribunal, before whom these officers were to vindicate the legality of the annexation. They accordingly put in no case, nor did they appear by counsel.

The petitioners having been so directed, lodged a case in which they set forth the facts, as stated at length in the Report, 5 Moore, together with a summary of the constitution of the colony, and referred to a variety of precedents and authorities from which they contended that the annexation in 1820, of Cape Breton to Nova Scotia, and the legislative authority of that province over the island, ought to be adjudged illegal for reasons set forth in their case as stated in the report *in re* Moore.

A case was also put in on the part of the Crown, wherein it was submitted that the re-annexation of the island to Nova Scotia was, in the circumstances, strictly legal, for reasons also therein set forth.

Counsel was then heard before the Judicial Committee on behalf of the petitioners, and also on the part of the Crown.

No judgment was delivered on the petition, but the report of their Lordships, which was afterwards confirmed by Her Majesty in Council, was as follows:—

"The Lords of the Committee, in obedience to your Majesty's said order of reference, have taken the said petition into consideration, and have heard counsel on behalf of the said petitioners, and have likewise heard your Majesty's Attorney General on behalf of your Majesty's Crown, and their lordships understanding it to be your Majesty's pleasure that their lordships' consideration of the matter referred to them, by your Majesty's said order of reference, should be confined to the question whether the inhabitants of Cape Breton are by law entitled to the constitution purporting to be granted to them by the letters patent of 1784 mentioned in the said petition, do agree humbly to report their opinion to Your Majesty, that the inhabitants of GREAT Breton are not so entitled.

In addition to these the cases *In Re* Pollard, Law Reports, 2 P.C., 106, and *In Re* Ramsay, Law Reports, 3 P.C., 427, were questions referred to the committee by Her Majesty, under the fourth section of the Act.



In conclusion, we advise your lordship to submit these remarks upon the report of the Honourable the Minister of Justice, with a respectfully request that they should be forwarded by his Excellency, together with that report, to the Right Honourable the Secretary of State for the Colonies, for the advice of the Judicial Committee of the Privy Council, under the 4th section of 3 and 4 William IV., cap. 41; and as in the case of the Island of Cape Breton above referred to, the committee will no doubt afford your lordship an opportunity of substantiating your case by affidavits or otherwise, and of being heard by counsel before them.

We think, also, that the Acts of Upper and Lower Canada, which establish the system of separate and dissentient schools in those provinces respectively, and the Acts of Nova Scotia in relation to education in that province, should be brought under the notice of the judicial committee, as well as our Acts of 1858 and 1871.

By collecting the laws on the subject of common school education in all the provinces in existence at the time of the union, the application of the language of the 1st sub-section of section 93 of the British North America Act to the common schools of this province at that time, will become very apparent.

We have, &c.

CHARLES DUFF,  
CHARLES W. WELDON.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 30th January, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th January, 1873.

The undersigned to whom was referred the letter of the Right Reverend Roman Catholic Bishop of St. John, New Brunswick, on the subject of the late new school law of New Brunswick, has the honour to recommend, that a copy of such letter, with the documents annexed thereto, be transmitted by your Excellency to the Right Hon. the Secretary of State for the Colonies, to be placed with the papers heretofore transmitted on the same subject, and to be taken into consideration at the same time.

JOHN A. MACDONALD.

*The Law Officers of the Crown to Lord Kimberley.*

TEMPLE, 29th November, 1872.

MY LORD,—We are honoured with your lordship's commands, signified in Mr. Holland's letter of the 25th November, instant, stating that he was directed by your lordship to transmit to us a copy of a despatch from the Governor General of Canada, with inclosures relating to an Act passed by the provincial legislature of New Brunswick, in May, 1871, relating to common schools, and to request that they would take the papers into our consideration, and favour our lordship with our opinion thereon.

In obedience to your lordship's commands we have the honour to report:—

That we agree substantially with the opinion expressed by the Minister of Justice of the Dominion. So far as appears from the papers before us, whatever may have been the practical working of annual education grants in the province of New Brunswick, the Roman Catholics of that province had no such rights, privileges, or schools as are the subjects of enactment in the British North America Act, 1867, section 93, subsection, *et seqr.*

It is, of course, quite possible that the new statute of the province may work in practice unfavourably to this or that denomination therein, and therefore to the Roman Catholics, but we do not think that such a state of things is enough to bring into opera-

tion the restraining powers, or the powers of appeal to the Governor General in Council, and the powers of remedial legislation in the Parliament of the Dominion, contained in the 93rd section. We agree, therefore, in the practical conclusion arrived at by Sir John A. Macdonald.

We have, &c.,

J. D. COLERIDGE,  
G. JESSEL.

*Mr. Reeve to Mr. Holland.*

PRIVY COUNCIL OFFICE, 13th December, 1872.

SIR,—I have submitted to the Lord President of the Council your letter of the 9th inst., transmitting a copy of a despatch from the Governor General of Canada with inclosures, respecting an Act passed by the provincial legislature of New Brunswick, with reference to common schools, and requesting to know whether the opinion of the lords of the Judicial Committee of the Privy Council on this question can properly be obtained.

It appears to his lordship that, as the power of confirming or disallowing Provincial Acts is vested by the statute, in the Governor General of the Dominion of Canada, acting under the advice of his constitutional advisers, there is nothing in this case which gives to Her Majesty in Council any jurisdiction over this question; though it is conceivable that the effect and validity of this Act may at some future time be brought before Her Majesty, on an appeal from the Canadian courts of justice.

This being the fact, his Lordship is of opinion that Her Majesty cannot, with propriety, be advised to refer to a Committee of Council in England, a question which Her Majesty in Council has at present no authority to determine, and on which the opinion of the Privy Council would not be binding on the parties in the Dominion of Canada.

I have, &c.,

HENRY REEVE,  
*Reg. P. C.*

*The Law Officers to Lord Kimberley.*

TEMPLE, 12th February, 1873.

MY LORD,—We are honoured with our lordship's commands, signified in Mr. Holland's letter of the 11th inst., stating, that with reference to the report furnished by us on the 29th November, respecting an Act passed by the legislature of New Brunswick, in May, 1871, relating to common schools, he was directed by your lordship to transmit to us a copy of a further despatch from the Governor General of Canada, forwarding a memorandum of the executive council of New Brunswick on the resolution by the House of Commons of the Dominion, on the 30th May last.

And that he was to request us to take the documents into consideration, and inform your lordship whether we saw any reason to change the opinion expressed in our report of the 29th November.

In obedience to your lordship's commands we have the honour to report, that we see no reason to alter or modify the opinion which we have already submitted to your lordship on this subject.

We have, &c.

J. D. COLERIDGE,  
G. JESSEL.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 13th March, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1873.

The undersigned, to whom was referred the despatch of the Right Honourable the Secretary of State for the Colonies of the 20th February last, begs leave to report:—

That it appears from this and from previous despatches, that the resolution adopted by the House of Commons of Canada at its last session, asking for the opinion of the law officers of the Crown in England as to the competence of the Legislature of New Brunswick to pass the Common School Act of New Brunswick of 1871, together with the minute of the executive council of New Brunswick, was submitted by Her Majesty's Government to the attorney and solicitor general of England.

On this reference the law officers have given their opinion that the provincial legislature was competent to pass the Act in question.

This opinion was given before the arrival in England of the letter and accompanying documents transmitted by the Roman Catholic Bishop of St. John, relating to the New Brunswick Act.

It is to be regretted that the delay in the preparation of the memorandum by the Bishop prevented his letter being before the law officers at the time they had the question under consideration.

As the Right Reverend Prelate, however, speaks on behalf of the Roman Catholic people who complain of the Act in question, and dispute its validity, it seems to the undersigned advisable that the attorney and solicitor general should be requested to reconsider the whole case, after having before them all the papers transmitted by your Excellency on the three several occasions, viz.:—The resolution of the House of Commons; the memorandum of the executive council of New Brunswick, and the letter and papers transmitted by the Bishop of St. John. Without such reconsideration, the Roman Catholic body might feel that the opinion had been given without their case being submitted or considered, and it would not therefore have the weight with them that is desirable.

JOHN A. MACDONALD.

JUDGMENT of the Supreme Court of New Brunswick upon the question of the constitutionality of "The Common Schools Act, 1871," delivered in Hilary Term, 12th February, 1873, in the case of Auguste Renaud and others. (*ex parte.*)

For Report of this case, *see* New Brunswick Reports, vol. XIV., pp. 273-300.

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 10th April, 1873.

MY LORD,—With reference to your Lordship's despatch, of the 13th March, and to previous correspondence, I have the honour to transmit to you herewith April 7, 1873. a copy of a further opinion of the law officers of the Crown on the subject of the Act passed by the legislature of New Brunswick, in 1871, relating to Common Schools.

I have, &c.,

KIMBERLEY.



*The Law Officers to Lord Kimberley.*

TEMPLE, 7th April, 1873.

MY LORD,—We are honoured with your Lordship's commands, signified in Mr. Herbert's letter of the 31st March ultimo, stating that he was directed by your Lordship to transmit to us copies of two despatches from the Governor General of Canada, with their inclosures, relating to the Act of the provincial legislature of New Brunswick, passed in May, 1871, relating to common schools; and that he was desired to refer us to the opinions given by us in reference to that Act, dated the 29th of November, and 12th of February last.

Mr. Herbert was pleased further to say, that he was to request that we would take those further papers into consideration, and favour your Lordship with our opinion upon them, and that he inclosed copies of the papers on which our previous opinions were given.

In obedience to your Lordship's commands, we have the honour to report:—That we have reconsidered this case with special reference to the further papers now sent, and we see no reason to alter or modify the opinion which we have already submitted to your Lordship on the subject.

We have, &amp;c.,

J. D. COLERIDGE,  
G. JESSEL.*Lieutenant-Governor Tilley to Secretary of State.*

GOVERNMENT HOUSE, FREDERICTON, 24th February, 1874.

SIR,—I have the honour to inclose a copy of a resolution passed by the House of Assembly, on the 23rd inst., and to request that the same may be submitted for the consideration of his Excellency the Governor General without delay.

I have, &amp;c.,

S. L. TILLEY,  
*Lieutenant-Governor.*

HOUSE OF ASSEMBLY, 23rd February, 1874.

Whereas it has been stated that a despatch has been received by his Excellency the Governor General, from the Right Honourable the Secretary of State for the Colonies, in reply to the resolution adopted by the House of Commons some time in the month of May last, asking his Excellency to disallow certain Acts passed by this legislature, or in reply to the despatch of his Excellency to the Right Honourable the Secretary of State for the Colonies on the subject of the said resolution;

And, whereas, it is very desirable that the legislature should be informed of the opinions of the Imperial Government, as to the exercise by his Excellency of the power of disallowing Acts passed by the legislature: Therefore, resolved that an humble Address be presented to his Honour the Lieutenant-Governor, praying that he will communicate with his Excellency the Governor General, and request that he will be pleased to cause a copy of all despatches from his Excellency the Governor General to the Right Honourable the Secretary of State for the Colonies, to his Excellency the Governor General \* on the subject of, or referring to, the said resolution of the House of Commons, to be transmitted to his Honour the Lieutenant-Governor, to be laid before the legislature during the present session.

GEORGE BLISS,  
*Clerk.*\* *Sic* in original.

*The Governor General to the Secretary of State for the Colonies.*

GOVERNMENT HOUSE, OTTAWA, CANADA, 27th May, 1873.

MY LORD,—I have the honour to inclose copy of a resolution, carried in the House of Commons on the 14th of May, by a majority of thirty-five against the Government, urging the disallowance by the Governor General of certain Acts passed by the New Brunswick legislature, with a view of legalizing a series of assessments, made under the Common School Act of 1871, and in amendment of that Act.

2. I also beg to inclose copies of the Acts referred to, and I further forward for your Lordship's information, the substance of the announcement made to the House of Commons on my behalf by Sir John Macdonald, in reference to the above-mentioned resolution.

3. From these documents, your Lordship will perceive that the majority of the House of Commons being strongly opposed to the severity with which the secular system of education, established under the Common School Act of 1871, is being applied in New Brunswick, and of which the Roman Catholic population vehemently complain, have endeavoured to paralyze the Act by an indirect attack upon the subsidiary machinery necessary to its operation, and that they sought to obtain this end through a resolution of the House of Commons in favour of the disallowance by the Crown, of certain assessment Acts passed by the local legislature for the material maintenance of the common schools.

4. I have already been instructed by your Lordship, in your despatches noted in the margin, that in the opinion of the law officers of the Crown, the New Brunswick School Act of 1871 was within the competence of the provincial legislature, and I am further advised by the Honourable the Minister of Justice that the present Acts are equally within its competence.

5. Under these circumstances, Sir John Macdonald has announced to the House of Commons that I am not at present prepared to comply with the terms of the resolution which has been passed in favour of the disallowance of these Acts, but that it is my intention to submit the circumstances of the case for the consideration of Her Majesty's Government, and to await your further instructions.

6. In taking this step, I have followed the course which has been recommended to me by my responsible advisers.

7. I have further to inform your Lordship that parliament has voted, at the instance of my government, a considerable sum of money for the purpose of defraying the expenses of those who propose raising the question of the legality of the provisions of the New Brunswick School Act before the Judicial Committee of Her Majesty's Privy Council.

8. I have also the honour to subjoin copy of a remonstrance which has been addressed to me by a delegation from the government of New Brunswick, consisting of the chief of the Executive Council and some of his colleagues, against the interference of the Dominion Parliament with the constitutional action of the provincial legislature.

I have, etc.,

DUFFERIN.

*The Executive Council of New Brunswick to Governor General.*

OTTAWA, 19th May, 1873.

MAY IT PLEASE YOUR EXCELLENCY,—As members of the Executive Council of New Brunswick at present in Ottawa, we beg to approach your Excellency upon a subject of the highest concern to the people of the province of New Brunswick.

To our very great surprise a resolution, moved in the House of Commons by Mr. Costigan, declaring *inter alia*, that it was the duty of the government to advise your

Excellency to disallow several Acts passed during the last session of the New Brunswick legislature, was carried.

The right of the House of Commons to pass a resolution affecting the prospective exercise of the prerogative, we do not propose to discuss, but we may remark that if such a right exists or can be exercised by the popular branch, it could only so exist or be exercised in matters over which the Parliament of Canada has the power of legislation.

The right of disallowance of Acts passed by any of the local legislatures, is a statutory as well as a constitutional power, vested in your Excellency by the British North America Act, and for the exercise of which there is no responsibility to the Parliament of Canada.

By the British North America Act, the local legislatures have exclusive powers of legislation in reference to certain specified matters, and so long as any legislature acts strictly within the prescribed limits, its legislation ought to stand, unless contrary to any Royal Instructions in that behalf.

The entire freedom of the executive, in dealing with matters expressly reserved to the provincial legislatures, is essential to the harmonious working, and even to continuance of the federal union. If the House of Commons can successfully control, by antecedent determination, the exercise of the executive authority, in respect of matters over which the House has not even any powers of legislation, it is clear that the rights and privileges of the provincial legislatures are only held and exercised by the sufferance of one branch of the Parliament of Canada.

It is conceivable that the House of Commons might lay down a series of instructions to the Crown, in the exercise of its prerogative and statutory powers, covering the whole ground of local legislation, under which no legislation would be possible, except in accordance with such instructions.

The House of Commons, in asking that your Excellency be advised to disallow a particular Act, virtually take to themselves the power of determining what Acts of the provincial legislatures shall be allowed; in short, they would thus make the legislation of all the local parliaments subservient to the opinion of a majority of their body.

The establishment of such a principle would be wholly destructive of the federal character of the union, and would entirely destroy the independence of the local legislatures.

Feeling strongly that the maintenance of such independent right of legislation as is secured to the local legislatures, should be upheld at all hazards as the only safeguard of the constitution, and considering that any aggressive act of the federal power should be met at the threshold, we deem it our duty, on behalf of our province, to remonstrate against the recent action of the House of Commons on Mr. Costigan's resolution.

The character of the legislation ought not to be an element in determining the right, still we beg to call your Excellency's attention to the legislation, which the House of Commons has declared it to be the duty of the government to advise your Excellency to disallow.

In 1871, the legislature of New Brunswick passed an Act relating to the common schools of the province, which came into operation on the 1st of January, 1872, and by which all the existing legislation relating to such schools was repealed.

The constitutionality of this Act was questioned, and although the Right Honourable the Minister of Justice gave it as his opinion that it was within the power of the local legislature to pass such law, the opponents of the Act brought the matter before the Parliament of Canada, at its last session, and a resolution was passed, whereby it was sought to obtain the opinion of the law officers of the Crown in England, and, if possible, of the Judicial Committee of the Privy Council, as to the constitutionality of such an Act.

The opinion of the law officers of the Crown was obtained and twice repeated, but the Lord President of the Privy Council declined to entertain the matter unless on appeal from the courts of New Brunswick.

The crown officers sustained the opinion of the Right Honourable the Minister of Justice, and also gave it as their opinion that the Parliament of Canada had no power



of remedial legislation under the 4th subsection of section 93 of the British North America Act.

We have already stated that the Common Schools Act came into operation on the 1st January, 1872, and in the course of its administration, assessments were levied in the greater part of the province, for the sustaining of the schools established under the Act.

The opponents of the law also tested the constitutionality of the Act in the courts of the province, by moving to quash the assessments in some fifteen to twenty different localities, including the populous towns and districts, such as St. John, Portland, Fredericton, Woodstock and St. Stephen.

The rates for general, county and parish purposes were assessed and levied under general Assessment Acts, and a portion of the school rate for a county school fund was directed to be assessed and levied along with, and at the same time as, these municipal rates; one roll was therefore made out, which contained all the rates, and any technical objection, which would be available as regards the municipal rate, would be equally so against the school rate, and *vice versa*, so that all the rates might stand or fall together; and thus parties opposed to the school law had open to them not only the alleged unconstitutionality of the School Act, but also all technical objections, arising out of the defective administration of the Acts relating to the assessing of municipal rates.

The Supreme Court, by unanimous judgment, held the Act to be strictly within the power of the local legislature, thus affirming its constitutionality; and they further held that the Parliament of Canada possessed no power of remedial legislation; but, in the matter of nine of these assessments, they granted *certioraris* upon various technical grounds, with a view to the ultimate quashing of the rates.

This judgment was delivered in February last, and the opponents of the law at once applied to the Supreme Court for leave to appeal therefrom to the Judicial Committee of the Privy Council, which leave was granted, the terms of the appeal to be settled by the chief justice.

No further steps were taken by the appellants, although their counsel was more than once informed, on behalf of the government, that counsel on their behalf was ready to attend and perfect the appeal; and at length the government were given to understand that the appeal would not be prosecuted.

Such was the state of the matter when the Acts legalizing the assessments now sought to be disallowed, were passed by the legislature.

We may here observe that, in a House of forty-one members, the bills were carried by large majorities, the minority vote ranging only from seven to nine, while several members in opposition to the law voted in the majority, believing the legislation to be absolutely necessary in the municipal interest of the localities.

The technical objections which had been raised as to seven of the assessments, had no reference to the administration of the School Act, but solely related to non-compliance with the provisions of the general assessment law, and in only two of the cases, the city of St. John and town of Portland assessments, were the technical objections sustained in reference to the administration of the School Act.

In the city of St. John, by the Common Schools Act, the trustees were required to lay before the common council, on or before the 1st of April, which was the time of ordering other city rates, an estimate of the amount required for school purposes, and such amount was to be assessed with and levied at the same time as other city rates. The trustees, however, by some oversight, did not hand in their estimates till the third week in April, but these rates were in fact assessed and levied at the same time as the other city rates, and it was therefore considered that the spirit of the law, which was that the school rates should be assessed and levied at the same time with the other rates, had been complied with.

In Portland a sum of \$150 for interest on debentures had been included in the school rate, but although the trustees had entered into an engagement for the purchase of land on which to erect school buildings, and although within a few days after they handed in their estimate, they would require to issue these debentures; yet, inasmuch

as the School Act used the term "interest on debentures issued," the courts held that no interest could be levied except on such debentures as had been actually issued before the estimate was made up. As the debentures were in fact issued a few days afterwards, and as this sum would be actually required to meet the two half-yearly payments of interest which would be due before the next year's assessment could be collected, the Act to legalize the assessment was passed.

The technical grounds in the other seven cases, which related to the non-compliance with certain provisions of the general assessment law, were but trifling, and one or two instances will suffice for all.

In the Richibucto-Kent case, while the warrant of assessment contained the several sums ordered to be assessed for each particular service, the roll contained only the total amount payable by each rate-payer, without setting forth the sum for each service, which latter the court held to be the correct mode. The general Assessment Act, which for the first time had received this construction, had always been acted upon in Kent, as well as in many other counties, by giving only the total amount of assessment on each rate-payer. Since the decision of the Supreme Court, the general assessment law has been amended, and were the amount to be re-assessed the roll would be made up in precisely the same way as the defective assessment was made up. The Act legalizing the Richibucto assessment, also provides for the collection of the rates in the other parishes of the county. This was rendered necessary by the reason of the time for the collection of the rates having expired, in consequence of the stay of proceedings granted by the court, the assessments themselves having been upheld.

In Fredericton, one-eighth of the assessable amount ought to have been levied by a poll-tax, but, for upwards of twenty years, a fixed sum of eighty cents had been levied for that purpose; whereas, it should have been about three dollars, and as the sum of eighty cents had been paid for the period named without question, the assessment was legalized.

Of the two Queen's County cases, the Wickham assessment was adjudged defective by reason of the general sessions of the peace having included in the warrant for assessment, a sum of \$20 to reimburse the commissioners of highways for costs incurred in a prosecution for breach of the Highway Acts; and the Petersville assessment, by reason of the assessors of rates having made an error of four cents in calculating the amount of the poll-tax.

We do not think it necessary to refer to any more of the cases, as those mentioned sufficiently indicate the general nature of the objections which were taken, and which by the Acts in question were not further made tenable, as grounds for finally quashing the assessments.

The Act in amendment to the Common School Act, which it is also asked shall be disallowed, contains provisions as to matters of detail, found to be essential to the proper and efficient carrying out of the intention of the original Act in providing free common schools for the youth of New Brunswick, and as the original Act has been declared by the highest tribunal in the province to be strictly constitutional, it was, and is, within the province of the legislature, to enact subsequent provisions, found necessary to ensure its efficient working.

The presumptions thus far being all in favour of the constitutionality of the original Act, your Excellency ought not to be called upon to disallow the Acts in question, pending an appeal to the Judicial Committee of the Privy Council, for no such appeal is now pending, nor is there any guarantee that any appeal will be prosecuted, the House of Commons having no power to compel the protesting parties to prosecute an appeal; and even if an appeal were pending, it would not afford any ground for the disallowance of the Acts, for if the original Act be unconstitutional, all legislation dependent upon, and in amendment of it, must fall also, and it is now quite open to the parties, from whom rates may be sought to be collected under these Acts, or against whom any provisions are sought to be enforced, to resort to the courts, and there raise the question that this subsequent legislation can be of no avail, being in aid of an Act which, as they allege, is unconstitutional.



This is the correct course for the objectors to take ; for, by seeking a disallowance of these Acts, your Excellency is asked to assume quasi-judicial powers, and in effect to declare that the Common Schools Act is unconstitutional ; in other words, your Excellency is besought to assume a power which, in the present state of the matter, belongs solely to the Judicial Committee of the Privy Council.

Again, should the judicial committee declare the Act to be beyond the power of the local legislature, no great inconvenience can follow to the parties who may have paid their rates, for these moneys can all be recovered back from the different municipalities and public authorities who may have ordered the assessments and received the funds ; while, on the other hand, were the Acts disallowed, the public inconvenience would be very great indeed, inasmuch as the assessments, as already stated, concern the rates and taxes for county, city and parish purposes, as well as the county school rate (which is but a small rate in comparison), and were these not collectable the debenture holders and other creditors of the various localities in which these assessments are ordered to be levied, would be greatly delayed in the payment of interest and other moneys due them, quite outside of and beyond the school rate, and the public credit of these localities would be seriously impaired.

We beg to add that we are quite sure that the remonstrance which we have felt called upon to make against the action of the House of Commons, will meet with the concurrence of our colleagues in the government of the province, and regretting that we have felt ourselves compelled to set forth at such length our views and the facts,

We have, &c.,

R. YOUNG,  
JNO. JAS. FRASER,  
GEO. E. KING.

*Substance of announcement made in House of Commons by Sir John Macdonald, on behalf of Governor General.*

The resolution adopted by the House on the 14th May, was duly laid before his Excellency the Governor General ; and I have it in command to state, that he is asked by one branch of the Parliament of Canada to exercise the royal prerogative, by disallowing certain Acts of the New Brunswick legislature. It is stated that these Acts were passed for the purpose of legalizing certain assessments made under the Common School Act of 1871, and in amendment of such Act, the object sought in getting these Acts disallowed is to give the parties complaining of the School Act, an opportunity of bringing such Act judicially before Her Majesty's Privy Council.

Now his Excellency has been already instructed by Her Majesty's government, in the opinion of the law officers of the Crown of England, that the Act in question was within the competence and jurisdiction of the New Brunswick legislature. Such being the case, his Excellency deems it is his duty to apply to Her Majesty's Government for further instructions in the matter.

I further desire to state that, considering the gravity of the question and the number of Her Majesty's subjects complaining of the School Act, the government will be prepared to ask parliament for a vote of money to defray all expenses of the appeal.

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 30th June, 1873.

MY LORD,—I referred to the law officers of the Crown, your Lordship's despatch, with its inclosures, of the 27th of May, No. 137, in which you requested instructions as to the course you should take with regard to the resolution of the Canadian House of Commons, urging the disallowance of certain Acts passed by the New Brunswick



legislature, with the view of legalizing a series of assessments made under the Common Schools Act of 1871, and, in amendment of that Act, I am advised :—

1. That these Acts of the New Brunswick legislature are, like the Acts of 1871, within the powers of that legislature.

2. That the Canadian House of Commons cannot constitutionally interfere with their operation by passing a resolution such as that of the 14th of May last. If such a resolution were allowed to have effect, it would amount to a virtual repeal of the section of the British North America Act, 1867, which gives the exclusive right of legislation in these matters to the provincial legislatures.

3. That this is a matter in which you must act on your own individual discretion, and on which you cannot be guided by the advice of your responsible ministers of the Dominion.

4. That these Acts of the New Brunswick legislature, being merely Acts for better carrying out the Act of 1871, and for getting rid of technical objections to the assessments thereunder, it would be in accordance with the Imperial Act, and with the general spirit of the constitution of the Dominion as established by that Act, for you to allow these Acts to remain in force.

I have, &c.,

KIMBERLEY.

## NEW BRUNSWICK, 35TH VICTORIA, 1872.

### 3RD SESSION—22ND GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th April, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th April, 1873.

The undersigned to whom was referred a certified copy of the Acts of the General Assembly of the province of New Brunswick, passed in the session held in the 35th year of Her Majesty's reign, and assented to by the Lieutenant-Governor on the 11th April, 1872, has the honour to report :—

That after a careful examination of the said Acts he is of opinion that they are unobjectionable. He, therefore, recommends that the same be allowed to go into operation.

JOHN A. MACDONALD.

## NEW BRUNSWICK, 36TH VICTORIA, 1873.

## 4TH SESSION—22ND GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th September, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd September, 1874.

The undersigned, to whom is referred a certified copy of the statutes passed by the legislature of the province of New Brunswick, in the session thereof, held in the 36th Victoria, A.D. 1873, has the honour to report:—

That, after a careful examination of the statutes, he is of opinion that the following are unobjectionable, and he, therefore, recommends that they be left to their operation.

Chapters 1 to 12 inclusive, 14 to 28 inclusive, 30 to 85 inclusive, 87, 89, 90, 94, 95, 96, 97, 98, 99, 101 and 102.

With reference to the Acts not included in the above list, the undersigned has the honour to report as follows:—

Chapter 13.—“An Act further relating to the several County Courts of New Brunswick.”

Section 1 has reference to appeals from the conviction of a justice of the county courts in its criminal competence. If this be so, it is a matter of criminal procedure, and not within the competence of the local legislature.

The attention of the government of New Brunswick is called thereto, with a suggestion that the clause should be repealed.

Chapter 29.—“An Act to establish certain Courts in the County of Madawaska.”

Section 4.—The working of this section has been represented as being beyond the competence of the local legislature, as in effect an appointment by them of a judge. Correspondence having been, however, had with the government of New Brunswick on this point, an Act has been passed in the session of 1874 in amendment of the same.

Chapter 86.—“An Act to incorporate the Saint George Red Granite Company, Limited.”

Section 3 seems to contemplate the carrying on of a business by a company in England and in the United States, and it may be doubted if this is not in excess of legislative competence.

It is suggested that the attention of the government of New Brunswick should be called to it.

Chapter 88.—“An Act to incorporate the Lake George Railway Company.”

Chapter 91.—“An Act to authorize David H. Budge and Samuel Stanton to erect a Boom across Eel River (near the mouth thereof) in the county of York, also side booms and piers in connection therewith.”

Chapter 92.—“An Act to incorporate the North-west Boom Company.”

Chapter 93.—“An Act to incorporate the Bay of Fundy Red Granite Company, Limited.”

Chapter 100.—“An Act to incorporate the Back Creek Stream Driving Company.”

In these different statutes there are no words which show the character of the streams, rivers or waters to be affected by the companies incorporated under them, and whether such streams, rivers or waters are navigable or merely floatable.

In the absence of any clear enactment on this, it is difficult to say whether the same are or are not within the competence of the legislature.

In any Acts of the Parliament of Canada having reference to the crossing or bridging of navigable streams or waters, provision is always inserted regarding the

approval of the Governor in Council before such is carried into effect, and in many cases the plans for crossing or interference in the same, must be submitted for the same approval.

When, therefore, such powers as are claimed by these Acts have been granted by the Parliament of Canada, they have been accompanied by restrictions and conditions calculated to protect a free navigation and the interests of the Dominion.

The enactments in the above-mentioned statutes are so unrestricted in their terms, that they would appear to apply to all waters.

If, therefore, they would thus interfere with navigable waters, the subject is one suggested for the consideration of the government of New Brunswick, as being one in which legislation should be had to define the rights intended to be granted by the Acts in question.

Chapter 103.—“An Act to incorporate certain Districts of the Parish of Saint Stephen, in the County of Charlotte, to be known as the Town of Milltown.”

Section 42, Sub-section 1, purports to confer on the Council of the Town of Milltown the right to make By-Laws.

First—The regulating of weights and measures, &c.

This is a matter solely within the competence of the Parliament of Canada.

It is not out of place to remark here that the Act passed by the Dominion Parliament on this same subject will be shortly put into operation, as the standards of weights and measures ordered in England are now reaching Ottawa; and that as soon as they be verified, the law will be put into operation.

It is suggested that this section should be repealed.

Sections 4, 5 and 6.—It may be doubted whether, in the way in which these sub-sections are worded, they are not in restraint of, or purporting to regulate, trade and commerce: and the consideration of the government of New Brunswick should be drawn to this point.

T. FOURNIER,  
*Minister of Justice.*



## NEW BRUNSWICK, 37TH VICTORIA, 1874.

5TH SESSION—22ND GENERAL ASSEMBLY.

*Sir Edward Thornton to the Governor General.*

WASHINGTON, 20th December, 1873.

MY LORD,—I have the honour to inclose copy of a note from Mr. Fish, submitting a complaint made by citizens of the state of Maine, with regard to obstacles alleged to be placed in the way of the navigation of the River Meduxmekeag, which, rising in that state, falls into the River St. John; and I shall feel much obliged if your Excellency will cause inquiries to be made whether there is any ground for the above-mentioned complaint.

I have, &amp;c.,

EDWARD THORNTON.

*Mr. Fish to Sir Edward Thornton.*

DEPARTMENT OF STATE, WASHINGTON, 19th December, 1873.

SIR,—This department has received, through members of Congress, a memorial from the inhabitants of the state of Maine, engaged in the lumber trade on the Meduxmekeag River, representing that they have been materially injured in their business by the proceeding of a corporation chartered by the legislature of H. M. province of New Brunswick, which corporation has placed dams, booms and piers on that river at or near its mouth, claiming and exercising authority to collect tolls on lumber passing down the same. As the proceedings of the corporation adverted to, appear to be at variance with the stipulations in the 3rd article of the Ashburton Treaty, I will thank you to bring the subject to the attention of the proper authority, in order that measures may be adopted towards redressing the grievances complained of.

I have &amp;c.,

HAMILTON FISH.

*Lieutenant-Governor Tilley to the Secretary of State of Canada.*

GOVERNMENT HOUSE, FREDERICTON, 3rd March, 1874

SIR,—I have the honour to transmit, for the information of his Excellency the Governor General, a copy of the report of my Attorney-General in which he states that, in his opinion, the charter granted to the Meduxnakik Boom Company, does not interfere with the rights secured to American subjects under the Ashburton Treaty.

The company referred to, are now seeking an extension of time for their charter from the legislature. Should their application be complied with, which is possible, provided certain conditions asked for by United States citizens are inserted, I will reserve the bill for the consideration of his Excellency.

A copy of the evidence taken before the committee, and of their report will be forwarded for the information of the Governor General.

I have, &amp;c.,

S. L. TILLEY,  
*Lieutenant-Governor.*

*Report of Mr. Attorney-General King.*

ATTORNEY-GENERAL'S OFFICE, FREDERICTON, 28th February, 1874.

SIR,—I have the honour to have received your direction to report upon the matters referred to in the communication of the 6th inst., from the Department of the Secretary of State, forwarding copies of despatches from the Secretary of State of the United States to Her Majesty's Minister at Washington, and from Her Majesty's Minister to his Excellency the Governor General.

It is represented that inhabitants of the state of Maine have been materially injured in their business by the proceedings of a corporation chartered by the legislature of this province.

I have the honour to submit herewith a copy of the several Acts relating to the corporation, viz. :—

1. An Act to incorporate the Meduxnakik Boom Company, 8 Vic., chap. 49.
2. An Act to amend the Act to incorporate the Meduxnakik Boom Company, 10 Vic., chap. 80.
3. An Act to continue the several Acts relating to the Meduxnakik Boom Company, 13 Vic., chap. 12.
4. An Act to continue the several Acts relating to the Meduxnakik Boom Company, 20 Vic., chap. 31.
5. An Act to continue the several Acts relating to the Meduxnakik Boom Company, 23 Vic., chap. 16.
6. An Act to continue the several Acts relating to the Meduxnakik Boom Company, 31 Vic., chap. 55.

The Meduxnakik (Meduxmekeag) is a tributary of the St. John River; it rises in the state of Maine, but for a distance of about twelve miles from its junction with the St. John, it flows through the province of New Brunswick.

I am of opinion that the Acts of the General Assembly above referred to cannot be deemed in violation of the stipulation of the 3rd Article of the Ashburton Treaty.

I have not been able to obtain information sufficient to state what has been the practical operation of the corporate power so granted, or whether or not the corporation have exceeded such powers.

The facts are in dispute, and I have not thought it necessary at present to enter into the somewhat lengthened inquiry that would be necessary in order to obtain full and trustworthy information, inasmuch as (1st), The complaint referred to in the despatch of the Secretary of State of the United States is general, and seems to relate to the character of the legislative authority under which the corporation act, and (2nd), the corporation having made application to the legislature now in session for an extension of their charter, a committee of the assembly are now engaged in taking evidence under oath, as well on behalf of the inhabitants of the state of Maine owning land on the head waters of the Meduxnakik, as on behalf of the corporation.

The parties are severally represented by counsel. On the completion of the labors of the committee, I shall lay before you a copy of the evidence.

In the event of the passage of the bill, I would advise that it be reserved for the signification of the pleasure of the Governor General.

I have, &c.,

G. E. KING,  
*Attorney-General.*

*Lieutenant-Governor Tilley to the Secretary of State for Canada.*

GOVERNMENT HOUSE, FREDERICTON, 18th May, 1874.

SIR,—At the last session of New Brunswick legislature a bill was submitted to further continue the Act to incorporate the Meduxnakik Boom Company.

A protest against the passage of the bill was forwarded from the authorities at Washington to his Excellency the Governor General, alleging that in its operations it would deprive American citizens of the rights secured to them under the Ashburton Treaty.

The bill as originally submitted has been materially changed by the legislature, and several conditions added, calculated to secure the free navigation of the river to all manufacturers of lumber.

I deemed it best, however, to reserve the bill; and now have the honour to inclose a certified copy for the signification of the pleasure of his Excellency the Governor General.

I have, &c.,

S. L. TILLEY,  
*Lieutenant-Governor.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th May, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th May, 1874.

The Lieutenant-Governor of New Brunswick transmits, by despatch of the 18th of May inst., the bill passed by the legislature of that province, at its last session, chapter 61, intituled:

"A bill to further continue and amend the Act incorporating the 'Meduxnakik Boom Company,'" and reserved by the Lieutenant-Governor on the 8th day of April last, for the signification of your Excellency's pleasure thereon;

Upon this bill, the undersigned has the honour to report:—

That it is for the purpose of continuing in existence the incorporation of the company named, and for providing for the continuance of the boom of the company, under certain amended provisions.

The bill consists of details in respect to the boom and the management thereof by a boom-maker, and the passage of logs into and through the same.

The subject of this bill was, in December last, brought under the notice of your Excellency by Her Majesty's Minister at Washington, at the request of the Secretary of State of the United States of America, who alleged on behalf of certain citizens of the state of Maine, that the bill then before the legislature tended to place and perpetuate obstacles being placed in the way of the navigation of the River Meduxnakik.

The objections then raised by Secretary Fish were submitted by your Excellency to the Lieutenant-Governor of New Brunswick, and in March last, the Lieutenant-Governor reported that the Attorney-General of New Brunswick was of opinion that the charter granted to the boom company, did not interfere with the rights secured to American subjects, under the Ashburton Treaty (that being, in effect, the complaint which Secretary Fish had made).

He further stated that the company were seeking an extension of time for their charter, and the Attorney-General stated that a committee of the assembly was then engaged in taking evidence under oath, as well on behalf of the inhabitants of the state of Maine owning land on the head waters of the Meduxnakik, as on behalf of the company, and that the parties were severally represented by counsel.

The river itself is a tributary of the St. John River, rising in the state of Maine and for a distance of about twelve miles from its junction with the St. John, it flows through the province of New Brunswick.

The bill now reserved is the result of the evidence taken by the committee of the legislative assembly of New Brunswick, and after or in consequence of the opposition which had been raised by the citizens of the state of Maine who were opposed to it.



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In forwarding the bill so reserved, the Lieutenant-Governor remarks that the bill as originally submitted has been materially changed by the legislature, and several conditions added, qualified to secure the free navigation of the river to all manufacturers of lumber.

To this may be added that the Honourable Mr. Muirhead of the state of Maine representing to a great extent the interests which had opposed the bill in the legislative assembly, has verbally expressed his concurrence, and that of most of those who are interested in the measure, and desire that the same should, for the interests of all parties concerned in the transmission of lumber down that river, be set in operation at the earliest date.

The undersigned has, therefore, the honour to recommend that in pursuance of the powers reserved by the British North America Act, 1867, to the Governor General, your Excellency should assent to the said reserved Bill.

I concur.

A. A. DORION,  
*Minister of Justice.*

H. BERNARD,  
*Deputy Minister of Justice.*

*Order in Council giving assent to the Act above mentioned, published in the Canada Gazette on the 30th day of May, 1874. Vol. VII., No. 48, page 1517.*

NOTE.—The remaining Acts of the session of 1874 do not appear to have been reported upon.

## NEW BRUNSWICK, 38TH VICTORIA, 1875.

1ST SESSION—23RD GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council, on the 25th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th October, 1876.

With reference to the statutes of the legislature of New Brunswick, passed in the session thereof held in the year 1875 (38 Victoria), the undersigned begs to report as follows :—

Chapters 1, 2, 3, 5 to 10, 12, 14 to 37, 39, 41 to 67 inclusive, 69 to 99 inclusive, 101 to 108, 110, 112 to 115, 117, 119 to 122, 124, 126, 128, 130 to 142 inclusive, do not appear to call for observation, or for the exercise of the power of disallowance.

Chapter 4. "An Act to amend the Attachment and Abolition of Imprisonment for Debt Act."

By this Act imprisonment for debt is revived. Whatever may be the opinion as to the expediency of such legislation, it is so essentially a local matter that, in the opinion of the undersigned, the Act should be left to its operation.

Chapter 11. "An Act to provide for the establishment, maintenance and management of Reformatory and Industrial Schools."

The undersigned defers for the present his report on this chapter.

Chapter 13. "An Act to authorize the issue of Provincial Debentures for certain purposes."

This Act authorizes, amongst other things, the issue of debentures in aid of the construction of a carriage and foot bridge across the River St. John at Woodstock, and provides that the Governor in Council may contract for the erection of this bridge as a separate undertaking, or in connection with the railway bridge to be built by the New Brunswick Railway Company across the River St. John at Woodstock.

The undersigned would refer to former reports with reference to bridges proposed to be erected across this river. These reports shows that, apart from the general question of interfering with the St. John as a navigable river, there is a necessity for special caution, in view of the treaty with the United States, as to its navigation.

It is presumed that it is not within the competence of the provincial legislature to authorize or do any act of this description, and it may be necessary for the government of Canada to interfere, in case any such act should be attempted.

The statute in question provides also for other objects, and any action under it towards the construction of the bridge can only take place through the Governor in Council; it would not seem necessary, therefore, to do more at present, than call the attention of the Lieutenant-Governor to the Act, with the intimation that there are no particulars before the government which would enable it to judge whether the bridge ought to be constructed, and the suggestion that before the time for determining as to its disallowance expires, so much of the Act as relates to this bridge should be repealed or amended, by providing that nothing should be done under it without lawful authority from Canada.

Chapter 38. "An Act to amend an Act to incorporate the Fredericton Boom Company and the several Acts in amendment thereof."

The Fredericton Boom Company was established many years ago under a Provincial Act of Parliament. This Act extends its powers, rights, privileges and duties on both sides of the St. John River and the island therein, from the mouth of the Mactaquac stream down the St. John River to below the Naswaak, and authorizes the erection of side-booms, piers and other works in and along the River St. John, and on

both sides of the river, and any other works connected therewith between these points, for the purpose of collecting timber, &c., floating down the river.

The 8th section provides, that it shall be the duty of the company to keep the channel of the river passable at all times as far as practicable for steamboats, boats and other vessel property, as also for rafts, and there are provisions for charging a toll on any rafts of logs or other lumber coming down the River St. John without any men on it, and which may be carried into any of the booms of the company, and the existing powers of the corporation are also extended to the new works.

The undersigned and his predecessors have had occasion to point out with reference to several provincial statutes, the question which may arise on legislation of this description.

The undersigned has communicated with the Minister of Marine as to his view of the probable operation of this Act, and he understands that the Minister—although some of the clauses are not quite so clear and full as they might be—does not apprehend injury to the navigation.

The minister does not conceive that the Act confers any more power upon the company to interfere with navigation, than that which they have enjoyed for the last thirty years.

It is obvious, as has already been pointed out, that in case the navigation is attempted to be interfered with, under colour of the Act, such interference cannot be justified, since the provincial legislature cannot confer any power to interfere with the navigation; and, upon the whole, having regard to the view of the Minister of Marine, the undersigned recommends that this Act be left to its operation, but that the attention of the Lieutenant Governor be called to the possible inconvenience which may arise from such legislation.

Chapter 40. "An Act to incorporate the Town of Moncton."

The 47th section of this Act gives to the council power to provide for the management of wharfs, piers, &c., in the town, and the toll to be paid for vessels and steamboats touching thereat or using the same.

The undersigned would remark that if there be a public harbour within the limits of the town, the powers given by these subsections may be beyond the competency of a local legislature, as applied to such harbour. He recommends that the attention of the Lieutenant Governor should be called to this point, as also to a similar question which arises with reference to the 49th section.

Chapter 68. "An Act to regulate the sale of spirituous liquors in the Parishes of Lancaster, Simonds, and Saint Martins, in the City and County of Saint John."

Sections 9, 10 and 11 of this Act raise some of the questions so frequently referred to, as in the course of judicial decision.

Chapter 100. "An Act to provide for the establishment of a police force and lock-up house at Caraquet, in the county of Gloucester."

Sections 5, 9 and 15. The word "offence" is used in describing the breaches of the Act.

The undersigned refers to former reports, in which the inconvenience of so describing breaches of provincial statutes is discussed, and suggests that the attention of the Lieutenant Governor should be called to the propriety of altering the phrase.

Section 7 provides for a special punishment for assaults on constables. Similar provisions have been more than once remarked upon as objectionable.

The undersigned recommends that the Lieutenant Governor should be requested to consider these clauses with a view to their repeal, as trenching upon criminal law.

Section 8. The offence provided against by this Act would appear to be a malicious injury to property, already made a crime under Canadian law, and the undersigned recommends that the Lieutenant Governor should be asked to invite its repeal.

Sections 10 to 15, both inclusive, and section 19. Some question may arise as to whether these sections may not trench upon the criminal law with reference to procedure.

Chapter 109. "An Act to amend an Act intituled: 'An Act to incorporate the New Brunswick and Canada Railroad Company.'"



The undersigned begs to report that, from an examination of the line authorized to be constructed by the various companies now included in the New Brunswick and Canada Railroad Company, it appears that these lines are within the province of New Brunswick, thus being within the competence of the local legislature. The Act should be left to its operation.

Chapter 111. "An Act to incorporate the Maritime Mutual Fire Insurance Company."

This Act does not in terms limit the powers of the company to a provincial business; but from the whole tenor of the Act it seems tolerably plain that a provincial business only is intended.

The undersigned recommends that the attention of the Lieutenant Governor should be called to the doubt, with a request that his government would consider the propriety of clearing it up by an amendment.

Chapter 116. "An Act to incorporate the St. Croix Wharf Company."

This Act incorporates a company for the erection of a wharf on the River St. Croix, at any point at or near Johnson's Cove, and it authorizes a toll upon property shipped from or landed on the wharf.

The undersigned has had already occasion to remark upon the questions to which legislation of this description gives rise, and it is his duty to point out that it is not within the power of a local legislature to authorize any interference with navigation, or with a public harbour; and that a question may arise as to the validity of the Act.

With these observations, however, he recommends that it should be left to its operation.

Chapter 118. "An Act to incorporate the Shediac Station Wharf Company."

The observations made on the preceding statute apply to this one.

Chapter 123. "An Act to incorporate the Belliveau Albertite and Oil Company."

This Act authorizes the company to construct a railway or tramway over and across any brooks, streams, or rivers on public lands, and to build harbours, piers or breakwaters on land owned by the company, above or below low-water mark, license therefor having been first applied for and obtained from the Governor General of Canada of the Lieutenant-Governor of New Brunswick in Council, as requisite.

The undersigned has already adverted to the questions which may arise with reference to such legislation, and he refers to his former report as applicable to this Act.

Chapter 125. "An Act to incorporate the Utopia Red Granite Company of Saint George."

The 8th section of this Act contains provisions similar to those just remarked upon.

Chapter 127. "An Act to authorize the erection of a Boom across the Jacquet River, in the County of Northumberland."

This Act authorizes the construction of piers, booms and side-booms for the purpose of collecting and forwarding timber, &c., floating down the Jacquet River, &c. It provides for the preservation of the navigation of the river, and authorizes the collection of tolls.

The undersigned refers to his observations already made upon similar legislation.

Chapter 129. "An Act to incorporate the Eel River Log-driving Company."

Chapter 143. "An Act to incorporate the Maduxnakik Stream Driving Company."

The undersigned refers to former observations upon similar Acts, which apply to these.

EDWARD BLAKE,

*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th December, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th December, 1876.

Upon the Act of the legislature of New Brunswick, 38 Victoria, chapter 11, of 1875, intituled :—

“An Act to provide for the establishment, maintenance and management of Reformatory and Industrial Schools ;”

The undersigned begs to report that this Act provides for the establishment of reformatory and industrial schools united under one management, but as separate institutions, for the reformation of juvenile offenders sentenced to imprisonment, and for the reception, education, and maintenance of homeless and destitute children.

Both objects contemplated by the Act have been the subjects of legislation in different provinces, but the undersigned is not aware that any attempt has heretofore been made to conjoin these operations in the same buildings, and under the same management.

The Act providing that the reformatory school, when established, shall be a reformatory prison, and the British North America Act authorizing the establishment of reformatory prisons by provinces, this subject would appear within the provincial jurisdiction.

The 19th section provides that the withdrawal of a certificate from any reformatory school shall not be published, until proper disposition is made of the offenders confined.

The attention of the undersigned has been called to the inconvenience and unsuitability of providing for the detention in the same building, and under the same management, of homeless and destitute, but unoffending children ; but however serious are the objections to which this case may be thought open, it does not seem to call for the exercise of the power of disallowance, and he recommends that the Act should be left to its operation.

EDWARD BLAKE,  
*Minister of Justice.*

## NEW BRUNSWICK, 39TH VICTORIA, 1876.

2ND SESSION—23RD GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th October, 1876.

With reference to the Acts of the legislature of New Brunswick, passed in the year 1876 (39th Victoria), the undersigned begs to report as follows:—

He recommends that the following Acts be left to their operation, namely:—Chapters 1 to 50 inclusive, chapters 53 to 62 inclusive, and chapters 64, 65 to 68.

Chapter 51. "An Act to incorporate the New Brunswick Red Granite Company (Limited)."

Chapter 52. "An Act to incorporate the Lepreaux Red Granite and Freestone Company."

These Acts contain provisions similar to those contained in chapters 116, 118 and 133 of the Acts of the former session, the observations upon which are applicable to these Acts.

Chapter 63. "An Act to incorporate the Pollit River Log-driving Company."

The undersigned refers to his observations already made upon similar Acts passed in the previous session of the legislature of the province.

The undersigned recommends that the attention of the Lieutenant-Governor be called to these Acts, but that they be left to their operation.

EDWARD BLAKE,

*Minister of Justice.*

*Lieutenant-Governor Tilley to Secretary of State.*

GOVERNMENT HOUSE, FREDERICTON, 16th January, 1877.

SIR,—I have the honour to forward, in compliance with the request of a committee of my Executive Council, a copy of the report of the Attorney-General upon certain Acts relating to the withholding of liquor licenses, for transmission to his Excellency the Governor General.

I have, &amp;c.,

S. L. TILLEY,

*Lieutenant-Governor.*

*Report of the Attorney-General upon certain Acts relating to the withholding of Liquor Licenses, approved by His Honour the Lieutenant Governor in Council on the 13th January, 1877.*

At the last session of the legislature a resolution was passed by the House of Assembly to the effect that it is desirable that the government should take the necessary steps to ascertain the powers of the legislature as to granting or withholding licenses to sell spirituous liquors.



The following are the most material provisions of the Acts of assembly relating to the withholding of such licenses :—

34 Vic., cap. 6, sec. 1, enacts that no license shall be granted or issued within any parish or municipality, when a majority of the ratepayers resident in such parish or municipality shall petition the sessions or municipal council, against issuing any license within such parish or municipality.

39 Vic., cap. 32, sec. 2, provides that the number of licenses to be granted within the city of Fredericton shall not in any year exceed one for each full three hundred of the population, according to the clauses next preceding the granting of the licenses.

The Supreme Court of this province in *Regina vs. the Justices of the Peace of the County of King's*, (2nd Pugsley's Reports, p. 535) decided that the provisions of 34 Vic., cap. 6, sec. 1. are void, as being beyond the powers of the legislature.

The second mentioned Act (39 Vic., cap. 32) has been left to its operation by his Excellency the Governor General in Council.

By section 52 of the Supreme and Exchequer Court of Canada Act it is enacted, that the Governor General in Council may refer to the Supreme Court of Canada for hearing or consideration, any matter whatsoever as he may think fit, and the court shall thereupon hear and consider the same, and certify their opinion thereon to the Governor in Council.

Application might be made to his Excellency the Governor General in Council, that his Excellency might be pleased to refer to the Supreme Court of Canada the question of the validity of the above recited clauses of 34 Vic., cap. 6, and 39 Vic., cap. 32.

In the event of such reference being made, this government would be prepared to assume any expense attending the reference.

In case his Excellency the Governor General in Council should not be pleased to make such reference, the question raised by the said Act might be submitted to the Supreme Court of the province, upon a special case, with a view to their ultimate determination on appeal by the Supreme Court of Canada, but inasmuch as the second section of the Act 39 Vic., cap. 32, does not come into operation until 1st May, A.D. 1878, it is conceived that the Supreme Court of this province would decline to entertain at the present any question touching the validity of such Act.

After the coming into force of the 2nd section, 39 Vic., cap. 32, the course above proposed might be pursued.

G. E. KING,

*Attorney-General.*

*Report of the Hon. the Minister of Justice.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th January, 1877.

Upon the despatch of the Lieutenant-Governor of New Brunswick, of the 16th January, 1877, inclosing, in compliance with the request of a committee of his council, a copy of the Attorney-General's report with reference to certain Acts affecting liquor licenses, I beg to report as follows :—

No Order in Council approving of the report of the Attorney-General has been communicated to his Excellency, but it may perhaps be assumed from the letter of the Lieutenant-Governor, that such an order has been made, and that in effect the government of New Brunswick has requested compliance with the suggestion of the attorney-general. The report refers to a resolution passed by the House of Assembly of New Brunswick, that it is desirable that the local government should take the necessary steps to ascertain the powers of the legislature as to the granting or withholding of license to sell liquor, and suggests that in order to give effect to this resolution, the

question of the validity of certain sections of two provincial Acts should be referred to the Supreme Court of Canada.

The Attorney-General points out, that in case such reference be not made, the questions raised by the Acts may be submitted to the Supreme Court of the province by a special case, with a view to their ultimate determination on appeal by the Supreme Court of Canada.

This course, however, he states, cannot be taken with reference to one of the Acts until the 1st May next, the time at which it is provided the Act shall come into force.

The alternative suggestion of the Attorney-General shows that it is not merely possible, but also easy, to bring the questions referred to before the consideration of the Supreme Court of Canada in its judicial capacity, by proceedings begun in the provincial court.

There is, therefore, obviously no absolute necessity for resorting to the plan which he proposes.

It may be laid down as a general rule that the power of reference to the Supreme Court by the Governor General in Council should not be exercised in matters which may, in the ordinary course of things, be brought judicially before that tribunal.

The opinion of the Supreme Court on such a reference would be given without the advantage of hearing argument. Such a disposition of an important and difficult question could hardly be regarded as satisfactory by the parties, while it would be unfair to the judges, who might, in the event of the question coming judicially before them, be embarrassed by their previous action.

On the whole, I recommend that the Lieutenant-Governor should be informed that, with every desire to meet the views of his government, it is thought, for the reasons I have assigned, to be inexpedient to make the proposed reference.

EDWARD BLAKE,

*Minister of Justice.*

*Note.—No Order in Council appears to have been passed upon the above Report.*

## NEW BRUNSWICK, 40TH VICTORIA, 1877.

3RD SESSION—23RD GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd February, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd December, 1877.

Upon the Acts of the general assembly of the province of New Brunswick, passed in the fortieth year of Her Majesty's reign, A. D. 1877,—received by the Secretary of State, on 19th May, 1877,—I beg to report:—

To the Acts, chapters 1 and 2, 4 to 9, 12, 13 to 24, 26, 28, 30 to 37, 39 to 49, there appears to be no objection, and I recommend that they be left to their operation.

Cap. 3.—“An Act relating to Municipalities.”

Section 17 provides that each candidate for the office of councillor shall, before being considered as properly nominated, make a certain declaration in writing, and goes on to provide that any person wilfully making a false declaration, or a declaration that he does not know to be true, shall be liable to a penalty not exceeding one hundred dollars.

This appears to entrench on the criminal law relating to perjury, and thus to be beyond the legislative authority of the general assembly.

The Act respecting perjury, namely, 32 and 33 Vic. (1869), cap. 23, appears to make full provision for the punishment of a person making a false declaration in such a case.

Section 90. The word “offence” is used in this section as describing a breach of the provisions of the section. It has been pointed out on previous occasions that this word is objectionable in describing a breach of provincial law, and the governments of several provinces have been requested to avoid, in local legislation, the use of this word for such purposes.

I recommend that the attention of the Lieutenant Governor be called to these remarks.

Section 92 provides that “every county or parish officer, whether in office at the time the requisition is made or not, shall, when required by the county council, render full, true and detailed accounts of all moneys received and paid by him under the orders of the council, or by the authority of any Act of assembly, or otherwise by virtue of his office, and shall, in like manner, whenever ordered, pay over any sum or sums of money which, by such accounts, shall appear to be due by such officer, and to have come to his hands as such officer as aforesaid, to such person or persons as the council in such order may appoint to receive the same; and, in case of disobedience of any such order, or of any other order of the council, lawfully made, or if the same shall not be attended to within ten days after the service of such order, it shall and may be lawful for any council to cause such disobedient or refractory officer, by warrant, to be brought before the council, and if such disobedience or improper conduct be persisted in, then or at any time afterwards, to commit such officer to the common jail, without bail, until such order or orders of the council shall be complied with, and such proceedings of the council against the said officer shall not in any case relieve his sureties from liability on any bonds entered into by them.”

Section 93 provides that in case the officer against whom the warrant is issued, be brought before the council, in consequence of their not being in session at the time of the execution of such warrant, such officer may be taken before a justice of the peace, and may enter into a recognizance with two sureties, and in such amount as the justice



may determine, not less than four nor more than eight hundred dollars, to appear at the next meeting of the council and abide the order of the council, and in default of such recognizance being given, the justice shall commit such officer to the county jail, there to remain until the sitting of the next council meeting, unless such recognizance be sooner given.

Section 94 provides that upon any person being brought before the council by virtue of a warrant issued under the provisions of the Act, the council may, instead of committing such person to jail pending an investigation, take from him a recognizance with sureties, to appear at any meeting of the council to be named, and abide the order of such council, and section 95 provides that if the council shall make an order for the payment by any officer, of any sums found to have been unlawfully applied or retained by him (which order the council is hereby empowered to make) and such order be not complied with, the council may, instead of committing such person to jail, make an order to the sheriff or constable, directing him to levy of the goods and chattels which (the officer) was ordered to pay, and in default of goods and chattels whereon to levy such sum, to take the person and deliver him to the keeper of the jail of the county, there to be kept safely until payment is made in full of the said amount and costs, or until discharged by order of the council.

The provisions appear to me very objectionable, and such as should not be left to their operation.

Among other objections which may properly be made to them are the following:—

1. If the circumstances connected with the non-payment of the money, or with the disobedience to the orders of the council be such as to make the defaulting or disobedient officer criminally liable, his punishment is already provided for by the criminal law. The Larceny Act, 32-33 Vic. (1869), chap. 21, would probably cover the case, and in this respect the provisions of the sections referred to seem to entrench upon the criminal law.

2. A very exceptional mode of determining the liability of the officer, and of realizing any amount due by him is pointed out, and the ordinary courts of justice established for determining the civil and criminal liability of the subject, are entirely disregarded, the proceedings of the council apparently not even being subject to appeal, or to be reviewed by any of the courts of justice, although by the order of the council, the liberty of the subject may be interfered with, and the disobedient or refractory officer imprisoned indefinitely, without being allowed even the opportunity of giving bail.

3. That the tribunal thus established, and to which such arbitrary powers are intrusted, and which is to be the judge to pronounce upon the extent of the liability, is composed of the persons most interested in the subject-matter upon which the decision is to be given. The council is in effect made sole judge in its own case.

I recommend that the attention of the Lieutenant Governor be called to these provisions, with a request that his government may, at the next session, before the time expires within which the Act must be disallowed, promote legislation to amend or repeal them.

Section 96 gives the council power to make by-laws on certain subjects. Among others (subsection 18) "For the occupation and grazing of marshes, sand bars, beaches and other low lands and islands, and the erection of water and other fences and gates thereon, and for determining what creeks, lakes, swamps, rivers, arms of the sea and fences shall be deemed lawful inclosures for the same."

Subsection 24.—"For the regulation and management of booms for holding timber, logs and other lumber, and for the driving of timber and logs; for fixing the table of tolls for boomage, with the lien of the boom master therefor, and prescribing the mode of recovering, and right of disposing of the lumber of any person for which such boomage may be charged in default of payment, not interfering with any corporation or person empowered by the law to establish a boom."

Subsection 32.—"For regulating the assizes of 'bread.'"

Subsection 33.—"For preserving the banks of rivers."

Subsection 39.—"For further regulating the measurement of boards, shingles, lathwood and other lumber, cordwood and other fuel."

Subsection 44.—“For regulating the discharging and depositing of ballast.”

The 97th section declares that no such laws shall be of any force, so far as they are repugnant to any laws, or beyond the authority or power which can be given by the legislature of the province.

This limitation upon the power of passing by-laws renders it less difficult to leave the 18th, 24th, 33rd and 44th subsections above mentioned to their operation, and although those subsections seem to some extent to entrench upon subjects over which the Parliament of Canada has exclusive legislative authority, yet in view of the restriction contained in the 97th clause, no inconvenience is likely to arise from their provisions.

The 32nd and 39th subsections appear, however, to entrench upon the subject of weights and measures, upon which, by the Confederation Act, the Parliament of Canada alone can legislate.

I recommend that the attention of the Lieutenant-Governor be called to these remarks.

Chap. 10.—“An Act in further amendment of the Act, intituled: ‘An Act to amend and consolidate the Laws to regulate the sale of Spirituous Liquors.’”

The extent of the right of the local legislatures to deal with this subject is now under the consideration of the courts, and, following the practice adopted in reference to other similar Acts, I recommend that the Act be left to its operation.

Chap. 11.—“An Act relating to Fences, Trespasses and Pounds.”

Section 7 makes use of the word “offence.” I call attention to the remarks above made as to the use of this word.

The Act, however, may be left to its operation.

Cap. 25.—“An Act to regulate the sale of Spirituous Liquors in the Parish of Lancaster, Simonds and Saint Martin’s, in the City and County of Saint John.”

I refer to the remarks on cap. 10 as to the extent of the right of local legislatures to deal with this subject.

Section 19 provides that no dealer or tavern keeper shall permit any apprentice to any profession or trade, or any person under the age of sixteen years, or any Indian, or any noted vagrant, to sit or remain drinking in his house or on his premises, nor shall he sell or give, or suffer to be sold or given, any spirituous liquors whatever to any such person, &c., &c.

Section 28 provides that whoever shall be convicted of any violation or breach of any of the provisions of the Act, and for which no special penalty is provided, shall be liable, on the first conviction, to a penalty of not less than ten nor more than twenty dollars, and on every succeeding conviction of the same violation or breach, a penalty of not less than twenty, nor more than forty dollars.

By the 37th section, penalties where recovered shall be paid into the county treasurer of St. John, and by him placed to the credit of the liquor license fund of the parish in which the offence was committed, any law or statute to the contrary notwithstanding.

Among the subjects reserved for the exclusive legislative authority of the Parliament of Canada is that of Indians.

I refer to the report of the Minister of Justice, dated 20th October, 1876, upon the statutes of the legislature of Prince Edward Island. In dealing with the 16th section of cap. 2 of those statutes, which provided that no liquor should be sold, or given by any person or to any Indian, without a certificate from the clergyman or medical man, under a penalty of \$10 for every offence, one-half of the fine to be paid to the informer and the other half to the treasurer of the province, the following remarks were made:—

“Upon this section the undersigned obtained the view of the Department of the Interior, which points out that the provisions of the section are in direct conflict with those of the Dominion Act passed last session, both as regards the amount and disposition of the penalty imposed, and that it seems clear that local legislation either in Prince Edward Island or elsewhere, on matters relating to Indians, can hardly fail to cause great practical inconvenience and confusion, if not (as in the present case) actual



conflict of laws. Very full provision is made by the Canadian Act, 39 Vic., cap. 18 (1876), respecting Indians in the 79th and following sections.

"It seems obvious that there should not be double legislation upon such a subject." These remarks equally apply to the section under consideration.

I recommend that the attention of the Lieutenant Governor be called to the section, with a suggestion that it should be amended to meet the objections raised, at the next session, and before the time expires within which the Act can be disallowed.

Section 20 is as follows:—"No dealer or tavern keeper shall entice, harbour or conceal any articted seamen or apprentice, on any pretence whatever, nor encourage or permit or suffer any riotous or disorderly conduct or drunkenness, or gambling of any kind in or about his premises."

The Dominion Parliament has, in its Act of 1873, cap. 129, respecting the shipping of seamen, by section 104, legislated upon the subject of enticing and harbouring seamen or apprentices, and although I do not recommend a disallowance of this Act by reason of the 20th section, yet I think it should be pointed out that inconveniences may arise by legislation in a province, upon a subject, in respect of which the Parliament of Canada has legislated, and may in future legislate.

I recommend that the attention of the Lieutenant-Governor be called to these remarks.

The word "offence" occurs in sections 33 and 41. I refer to the remarks above made with reference to the use of this word.

Cap. 27.—"An Act to increase the facilities for the collection of Small Debts in the City of Fredericton."

I had occasion, in reporting upon the Acts of British Columbia and also of Ontario, to point out the danger of permitting provincial legislation, which not only constitutes courts for the administration of justice, but also appoints the judges of those courts.

I desire here to refer to those reports: inasmuch, however, as similar legislation to that contained in this chapter, has been left to its operation in other provinces, I do not recommend the disallowance of this Act.

Cap. 29.—"An Act to continue and amend an Act passed in the sixteenth year of the reign of Her Majesty, intituled: 'An Act to incorporate the Courtenay Bay Bridge Company.'"

The Act, which this Act continues and amends, was passed previous to Confederation, but it would seem that the bridge for the construction of which the company was incorporated has not yet been built, and as the right of the local legislature to pass this Act seems to depend upon whether or not the water over which the bridge is to pass may be required for purposes of navigation. I made inquiries from the Department of Marine and Fisheries as to the navigability of the water in question.

The Deputy Minister of Marine and Fisheries states that there is no navigation at Courtenay Bay, that place being all dry at low water, except in a small creek called "Marsh Creek," on the banks of which vessels as large as 1,500 tons burden are sometimes built. As provision is made in the Act that a sufficient draw, or other means shall be placed and maintained in the bridge to allow access to ships and vessels up and down the creek, he sees no objection whatever to the continuation of the Act.

The 10th section of the Act now under consideration provides that a plan and fully detailed description of the site and position of the bridge and road to be built, including a complete detail as to size of draw to be placed in the bridge, shall be forwarded to the Minister of Public Works at Ottawa, and the site and position so selected shall be subject to the approval of the Governor General in Council.

Under the circumstances the Act seems unobjectionable, and I recommend that it be left to its operation.

Cap. 38.—"An Act to alter and amend an Act intituled: 'An Act to incorporate the St. John Gas-light Company,'"

This Act authorizes the St. John Gas-light Company to lay a drain from the works of the company into the harbour of the city of St. John, for the purpose of carrying off the refuse water arising from their gas works. This power, if restricted, might lead to serious evils, but as the Act provides that it shall not be exercised unless with the con-



sent and approval of the common council of the city of St. John first had and obtained, and signified by a vote of at least ten members of the common council, exclusive of the mayor, and unless upon the sanction of the Governor General of Canada first had and obtained, the Act may, I think, be safely left to its operation.

Cap. 50.—“Act to provide for the Sewerage Service and Water Supply in the Town of Portland.”

The word “offence” is made use of in this chapter; I refer to the remarks above made respecting the use of the word. The Act appears otherwise unobjectionable, and I recommend that it be left to its operation.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

R. LAFLAMME,  
*Minister of Justice.*

*Lieutenant-Governor Tilley to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, FREDERICTON, 14th May, 1878.

SIR,—I have the honour to transmit to you, herewith, the report of my late Attorney-General, in reference to the report of the honourable the Minister of Justice on the Acts of the legislature of this province, passed in 1877, 40 Vic., and which, with the order of his Excellency the Governor General in Council, was forwarded to me from your department on the 25th February last.

I have, &c.,

S. L. TILLEY,  
*Lieutenant-Governor.*

*MEMORANDUM for His Honour the Lieutenant-Governor upon the Report, dated 22nd December, 1877, from the Honourable the Minister of Justice, upon the Acts of the General Assembly of this Province, passed in the Fortieth year of Her Majesty's reign.*

Cap. 3.—“An Act relating to Municipalities,” certain sections of which were objected to, were repealed by its incorporation in Consolidated Statutes under the authority of Cap. 13 of Acts of 1877, and now appears as cap. 99 of the Consolidated Statutes. The repeal is noted on page 1009 of the Consolidated Statutes.

At the late session of the legislature so much of section 17, of cap. 99, of the Consolidated Statutes, as imposes a penalty in respect of a false declaration, was repealed.

In the Consolidated Statutes care was taken to avoid the use of the word “offence,” as describing the breach of provincial law, and in the instances in which the word had been inadvertently used, in the Acts of 1877, it will be found that in the consolidation of such statutes, the word is omitted.

Sections 92, 93, 94 of cap. 99, of the Consolidated Statutes, were not repealed, as it is conceived that while, perhaps, they are of doubtful policy, they are clearly within the competence of the local legislatures.

The Act 40 Vic., cap. 3, in which the above sections first occur, and to which objection was taken, is, however, repealed, as above stated.

Subsections 32 and 30, of section 96, of cap. 99, of the Consolidated Statutes (being the sections corresponding to subsections 32 and 39, of section 96, of cap. 3, of the Acts of 1877), were also repealed at the late session of the legislature.

Cap. 25.—“An Act to regulate the sale of Spirituous Liquors in the parishes of Lancaster, Simonds and St. Martins, in the city and county of St. John.

Sections 19 and 20 (and also section 30 of cap. 105 of the Consolidated Statutes which was open to the same objection) was also repealed at the late session of the legislature.

G. E. KING,  
*Attorney General.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 22nd May, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th May, 1878.

Referring to my report of the 22nd December last upon the Acts of the General Assembly of the province of New Brunswick, passed in the fortieth year of Her Majesty's reign (1877), I beg to report:—

That not having received a copy of the statutes of the past session of the province, and the time for the disallowance of the Acts of last year expiring on the 19th instant, a communication was sent to the Lieutenant-Governor of New Brunswick, asking what action had been taken in reference to the objections made to certain provisions of the statutes of 1877.

The Lieutenant-Governor states that the objectionable provisions of the Acts were repealed.

I recommend that the various statutes in question be left to their operation.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

R. LAFLAMME,  
*Minister of Justice.*

## NEW BRUNSWICK, 41ST VICTORIA, 1877.

## 4TH SESSION—23RD GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th September, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th September, 1878.

I have the honour to report upon the Acts passed by the General Assembly of the province of New Brunswick, at the special session, in the months of August and September, 1877.

This session appears to have been rendered necessary by the great fire at St. John, in the month of June previous.

The Acts passed are caps. 1 to 23, inclusive.

With the exception of certain provisions of the 4th section of cap. 8, which is intitled: "An Act to define and establish the side lines of streets in the city of St. John, and to prevent encroachments on the public streets," all the other Acts appear unobjectionable, and I recommend that they be left to their operation.

With reference to the section referred to, however, I would remark that it appears to entrench upon criminal law, inasmuch as the section declares that every erection, building, porch, stoop, step, encumbrance or obstruction whatsoever, being upon any of the streets referred to in the Act, or upon, or over the side line of any of the streets, is to be, and upon the passing of the Act, is to become, a public nuisance.

Although it is within the competence of the local legislature to define the sides and limits of a public street in the province, yet it seems clear that it is not within their competence to declare that an encroachment upon that street is to be a public nuisance.

It is laid down, that there can be no doubt, "that any contracting or narrowing of a public highway is a nuisance," and that "an obstruction in any part is the subject of indictment." (Russell, on Crimes, Book 2, cap. 30, section 2.)

It is clear that a public nuisance is properly punishable by indictment, and is not the subject of a civil action unless the person suing civilly has sustained some extraordinary damage by it, beyond that sustained by the rest of the public.

I do not propose to recommend the disallowance of this Act on account of the provision referred to, but as it is desirable that all provisions of provincial statutes should be within the competence of the provincial legislature, I recommend that the attention of the Lieutenant-Governor be called to these remarks with the suggestion that at the next session, his government should promote the necessary legislation to repeal the objectionable parts of the section, and that the words "made a public nuisance by this Act," contained in the 5th section, should be struck out, and other suitable words inserted.

It will be seen that, even if no provision be made declaring the obstruction a nuisance, it would be, by common law, a nuisance and so indictable.

I concur.

R. LAFLAMME,

*Minister of Justice,*

Z. A. LASH,

*Deputy Minister of Justice.*



## NEW BRUNSWICK, 41ST VICTORIA, 1878.

5TH SESSION—23RD GENERAL ASSEMBLY.

*Lieutenant Governor Tilley to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, FREDERICTON, 4th May, 1878.

SIR,—I have the honour to transmit to you herewith, in advance of the general Acts passed at the last session of the legislature of this province, a manuscript copy of an Act intituled: "An Act to incorporate the St. John and Maine Railway Company, cap. 92."

I do this at the request of the representative of the bondholders of "The European and North American Railway" westward, as that railway is soon to be sold under a foreclosure of mortgage, and the bondholders who are likely to be the purchasers, naturally desire that the question of the constitutionality of the recent legislation should be settled. Mr. Murray Kay, the representative of the bondholders, is now on his way to Ottawa to confer with the honourable the Minister of Justice.

The following is a copy of the Attorney General's certificate on the Acts, and which refers to the Act above alluded to.

"I certify that these Acts are within the competency of the legislature of the province. The title of the bill intituled: "An Act to incorporate the St. John and Maine Railway Company" is objectionable, as seeming to show that the line of railway extends beyond the limits of the province, but on the whole I am of opinion that the Act is a proper one to be assented to.

"G. E. KING.

"April 18th, 1878."

I have, &amp;c.,

S. L. TILLEY,

*Lieutenant Governor.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd July, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th June, 1878.

I have the honour to report upon an Act passed by the Legislative Assembly of the province of New Brunswick at its last session (assented to on 18th April, 1878) intituled: "An Act to incorporate the St. John and Maine Railway Company" which Act was transmitted by the Lieutenant-Governor in advance of the general Acts of the session, in order that the same might be considered at an early day. Having carefully examined the Act, and having considered, in connection therewith, the Act of the province of New Brunswick before Confederation, passed in the year 1864, cap. 43, and intituled: "An Act to incorporate the European and North American Railway Company for extension from St. John westward," and the Act of the parliament of Canada passed in the year 1875, cap. 71, I am of opinion that it is a proper Act to leave to its operation, and I recommend accordingly. The title is somewhat objectionable, as indicating that the railway may extend beyond the province, and into the state of Maine;

as a matter of fact, however, the line is to be within the province, and as the title of the company is a convenient one, as indicating the two termini of the line, the power of disallowance should not, I think, be exercised on this account merely.

I concur.

R. W. SCOTT,  
*Acting Minister of Justice.*

Z. A. LASH,  
*Deputy Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 28th October, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd October, 1879.

I have the honour to report upon the Acts passed by the legislature of New Brunswick in the month of April, 1878, received by this government on the 22nd day of March, 1879, as follows:—

Cap. 47.—“An Act in addition to cap. 105 of the Consolidated Statutes, of Licenses for sale of Spirituous Liquors and to repeal certain sections of the Act 40th Vic., cap. 25.”

Cap. 48.—“An Act in addition to an Act entitled: ‘An Act relating to Licenses in the city of Saint John,’ being in addition to and amendment of an Act to regulate the sale of Spirituous Liquors in the city and county of Saint John.”

Cap. 49.—“An Act in reference to the sale of Spirituous Liquors within the town of Moncton.”

As these Acts deal with licenses for the sale of spirituous liquors, and as the question as to how far such legislation is an interference with the regulation of trade and commerce is still undecided, I think it proper, in recommending that the Acts be left to their operation, to refer merely to the doubt which exists upon the subject.

As to chapters 24 to 46, and 50 to 113, I recommend that these Acts be left to their operation.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

JAS. McDONALD,  
*Minister of Justice.*

## NEW BRUNSWICK, 42ND VICTORIA, 1879.

1ST SESSION, 24TH GENERAL ASSEMBLY.

*Mr. Jno. Jas. Fraser to Minister of Justice.*

FREDERICTON, 28th April, 1879.

SIR,—At the last session of the New Brunswick legislature there was passed, *inter alia*, “an Act relating to the Supreme Court,” and “an Act to facilitate the transaction of the business of the Supreme Court.”

These Acts have been transmitted to the Hon. the Secretary of State at Ottawa, together with a copy of an order, passed by his Honour the Lieutenant Governor in council, requesting that the Dominion government would cause provision to be made for the salary of the judge in equity, to be appointed on the coming into force of the first-mentioned Act.

In view of the legislation thus had, it may be proper that I should bring under your notice, the state of matters which rendered such legislation necessary.

Up to the year 1872, although the business of the Supreme Court, *en banc*, was slightly in arrear, yet no serious inconvenience was thereby caused to suitors, but in that year, quite a block commenced, which has since been constantly on the increase, and for the last two years, it has been felt that some measures of relief must be obtained, and the manifest injustice to suitors, which had become matters of serious and just complaint, be removed if possible.

The judges sitting during the four terms of Hilary, Easter, Trinity and Michaelmas, have, during the last few years, occupied fully three weeks for each term. There are also eleven monthly sittings in equity, held at Fredericton, generally occupying from one to two weeks each for hearings in equity, besides which the equity side of the Supreme Court is always open for the transaction of other equity business.

Of the twenty-six circuit courts held each year in the various counties of the province, no less than five of these circuits are held in St. John, and the number of days of circuit sittings, in St. John, has, for some years past, averaged about one hundred days in the year, notwithstanding which there are large arrears of entries on the St. John dockets.

Looking at the above as well as at the other business which the judges are called upon to perform at chambers; also, the matter of election petitions and otherwise, it may readily be admitted that it is from the vast amount of labour to be done, and not from any want of full attention to the diligent discharge of their duty on the part of the judges, that the present state of matters exist.

A remedy for this condition of the court business, has for a year or so past, been much discussed by the members of the bar, and by the barristers' society, and committees have been appointed to confer with the local government on the subject.

This led to the drafting of a bill prior to the session of 1878, one of the provisions of which bill was the creation of an additional judge, but, owing to various circumstances, the measure was not matured so as to ask the legislature for its then enactment. The necessity for some action was, however, fully conceded, and it was generally understood that another session of the legislature should not be allowed to pass without some action being taken.

During the last summer, the whole subject of the state of business in the Supreme Court was carefully considered by the government, and at Hilary term last, and before the opening of the late session of the legislature, a committee of the barristers' society was appointed again to consider the whole question, which committee made full reports that were discussed at length by the society, and resolutions were adopted favouring the



appointment of an additional judge, and approving of a proposal to have the court sit in two divisions as the only means of bringing up the arrears of business, and preventing any future block.

The reports of the committee, with the resolutions, were laid before the government for their consideration.

Bills, of which the present Acts are copies, were then prepared, embodying such suggestions of the barristers' society, and members of the bar, as were thought would be most likely to afford the best means to advance the administration of justice in the supreme court.

It was found that the court at the then Hilary term would commence with business which was entered for argument in the Hilary term previous, and which business, if there had been no arrearages, ought to, and would have been then heard and disposed of. In addition to which, from the great pressure upon the time of the judges, and from their desire to reduce the number of unheard causes standing upon the docket, the court were obliged to hold, term after term, the preparation of judgments in causes which had been heard.

Besides this, in important equity causes, for the same reasons, the delivery of judgments was unavoidably withheld for a very great length of time, to the serious prejudice of suitors.

By the creation, as proposed, of a judge in equity, who should also be a judge of the Supreme Court, but not required to attend circuits, and whose peculiar duty it would be to attend to equity causes, the business in equity can be more promptly and efficiently attended to, and the practice of the court become more uniform and certain, than was found to be the case when the several judges took the equity sittings alternately, and the addition of this judge also makes practicable divisional sitting of the supreme court, for the disposition of the business *en banc*, thus enabling the court to overtake the arrearages, and be the means of preventing the recurrence of any future undue accumulation of business.

I may add that both Acts, before their introduction into the Assembly, were submitted to the chief justice, and some other of the judges, who approved both measures, and expressed a strong opinion that they would effect the object sought to be attained.

I have, &c.,

JNO. JAS. FRASER.

*Mr. D. L. Hannington to Governor General's Secretary.*

DORCHESTER, N.B., 8th July, 1879.

DEAR SIR,—On behalf of E. P. Turner, of Harvey, in Albert Co., N.B., I now forward you, for his Excellency the Governor General's approval, a petition against an Act of our legislature, passed last session.

You will please bring the matter before his Excellency that it may receive consideration, as it is a very important matter to Mr. Turner, and oppressive legislation against him.

I remain, &c.,

D. L. HANNINGTON.

*Petition of Mr. E. P. Turner.*

*To His Excellency Sir John Douglas Campbell (commonly called the Marquis of Lorne), Knight, and Governor General of Canada.*

The petition of Elisha P. Turner, of Harvey, in the county of Albert, in the province of New Brunswick, humbly sheweth:—

1. That in or about the year 1861 an assessment was professedly made by Michael Keever and others as commissioners, German Town Lake District, in the said county of Albert, by which an amount of about \$1,200 was ordered to be paid by myself, and

your petitioner being dissatisfied therewith, took the usual proceedings in the Supreme Court of this province, to have said assessment set aside and quashed, which, after long argument, was done by a judgment of said court *re Regina vs. the Commissioners of German Town Lake District*, published in the 1st vol. of Hanney's Report (to which your petitioner would beg leave to refer), on the ground, among others, that the said commissioners were and had acted in said assessment and work, as judges in a matter in which they were personally and pecuniarily interested.

2. That afterwards the said Michael Keever, and others interested in said assessment, applied to the legislature of the province, from time to time, to legalize the same, in which they failed.

3. That in the year 1873, 36th Vic., cap. 79, an Act of the legislature of this province was passed, authorizing the appointment of commissioners to ascertain, fix and determine the amount due or to be paid by the owners of said district (and your petitioner would refer your Honour to said Act), and section 2nd thereof provides that the said commissioners shall, in such assessment, have due regard (among other things) and "take into consideration and allow such amount for improvements at any one time therefor, made by any proprietor or owner of land in said district, for any labour or money he may have expended in cutting, making, repairing and maintaining any canal or dyke made in said district, and for any legal, taxable costs incurred by any commissioner or proprietor, by litigation in reference to said district, as they may consider just and reasonable."

4. That your petitioner had long before constructed, and thus had a canal and other very expensive works amounting to the cost of several thousand dollars in said lands, and of benefit to others besides himself, and had also expended a large amount in taxable costs in reference to the matters mentioned in said section, and which should have been ascertained and taken into consideration by commissioners under said Act.

5. That the Honourable Amos E. Botsford, Amos Ogden and Martin Trueman were, in or about the year 1874, appointed commissioners under said Act, and, in July of the year 1874, went to the county of Albert, and on the day, or day before, they went on the marsh to hold the examination thereof; on the public road, one mile from the marsh in question, met your petitioner, who was then on his way under subpoena to attend the Circuit Court as a grand juror, and told him they were going to said district to inquire; to which your petitioner told them where he was going, that he could not recognize them as commissioners, but would be glad to see them as private individuals; and your petitioner at once, on arriving at court, consulted his counsel about said matters, and was advised by them that the commissioners would hold an inquiry and would doubtless notify him of the time and place, and for your petitioner to attend and protest against their power, but to give evidence of the facts, and your petitioner claims for his canal and other works and expenditure, referred to in said last mentioned Act, which your petitioner intended to do, but never received any notice of any court or inquiry, nor had any notice (except the conversation on the road aforesaid, which was only general as aforesaid) of any inquiry or investigation of the matter until it was all over, as your petitioner believes.

6. That afterwards the said commissioners made an assessment, or professed to do so in the matter, and assessed against your petitioner the sum of seven hundred and sixty-nine dollars and eighty-nine cents (\$769.89), which was done without any evidence taken on oath, nor was any proper or sufficient notice to your petitioner, nor a fair opportunity given for the proof of his claims, or the taxation of his costs, which costs had to be taxed at Fredericton by the clerk of the Superior Court, some two hundred miles from where the inquiry took place.

7. That the said assessment so made as last aforesaid, was made without any sworn evidence, or any proper court of inquiry held, or notice to your petitioner and others interested being given—and upon the statements not under oath of said Michael Keever and others made *ex parte*, and no proof of your petitioner's expenditure, under the terms of said Act of 1873, and is most unjust to your petitioner.

8. That your petitioner took proceedings in the fall of the year 1876. When the sale of his property was attempted to be made, and on the arguments and affidavits by



the commissioners and others, and cause shown on behalf of said commissioners and in support of the assessment, and the above grounds (among others) urged against the said commissioners, the Supreme Court of this province made the rule for *certiorari* absolute, whereupon a return was made, during the last few months, by the commissioners *pro forma*, a rule to quash the same would issue.

9. That the said last mentioned assessment was, and is, illegal and void, as your petitioner is advised and believes, and as he is informed, the court virtually decided, not on mere formal or technical grounds, but on the merits, and because no proper notice was given to your petitioner, nor any proper inquiry held or evidence on oath given.

10. That, during the last session of the legislature, a bill intituled: "An Act to legalize the assessment made by the Honourable Amos E. Botsford, Amos Ogden and Martin Trueman, the commissioners appointed under cap. 79, 36 Vic., to ascertain, fix and assess, for the amount due to the commissioners of German Town Lake, appointed under Act 22 Vic., cap. 53, was introduced, and, though disapproved by the Hon. the Attorney-General and others, on the ground that it was improper legislation, a majority voted therefor, and it was carried, also, in the legislative council, notwithstanding the papers and facts submitted, proved that no proper inquiry was held, or notice given, by the said commissioners."

11. That, as your petitioner believes the said Act, so passed this past session, is unjust, illegal and oppressive, and seeks to enforce a claim against your petitioner that is illegal and unjust, and your petitioner, therefore, prays that the same may be disallowed by your Excellency, and the parties left to a new assessment, or a proper inquiry, or other legal remedy, as if said Act be allowed, it will cause a great injury and wrong to your petitioner, as he verily believes.

And your petitioner, as in duty bound, will ever pray.

ELISHA P. TURNER.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th January, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th November, 1881.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the statutes passed by the legislature of the province of New Brunswick, in the forty-second year of Her Majesty's reign, received by the Secretary of State on the 11th December, 1880, as follows :—

Chap. 29.—"An Act to incorporate the Sheer Boom Improvement Company."

Chap. 30.—"An Act to incorporate the Restigouche Boom Company."

These Acts incorporate companies for the purpose of constructing booms on certain streams in the province to facilitate the driving of timber and logs. The legislative authority of the provincial legislatures over the subject matter of these Acts is not entirely free from doubt, inasmuch as the subject is necessarily closely allied to that of navigation, over which the parliament of Canada has exclusive legislative authority. Inasmuch, however, as provincial legislation of a similar nature has frequently been allowed to go into operation since confederation, and as the companies do not in law acquire by these Acts any power to interfere with the navigation of such rivers or parts of rivers as are navigable, the undersigned recommends that the power of disallowance be not exercised with respect to these Acts.

The undersigned, however, recommends that the attention of the Lieutenant-Governor be called to these remarks.

As to chapters 1 to 28, and 31 to 65. These Acts do not seem to call for any special remark, or for the exercise of the power of disallowance. I recommend that they be left to their operation.

A. CAMPBELL,  
*Minister of Justice.*



## NEW BRUNSWICK, 43RD VICTORIA, 1880.

2ND SESSION—24TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 12th July, 1881.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th June, 1881.

*To His Excellency the Governor General in Council :*

I have the honour to report with respect to the Acts passed by the legislature of the province of New Brunswick in the year 1880 :—

I recommend that the power of disallowance be not exercised with respect to the whole of the said Acts which are as follows, namely :—Chapters 1 to 58.

A. CAMPBELL,  
*Minister of Justice.*

## NEW BRUNSWICK, 44TH VICTORIA, 1881.

3RD SESSION—24TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th July, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th July, 1882.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report with respect to the Acts passed by the legislature of the province of New Brunswick in the year 1881, as follows:—

Chap. 19. An Act relating to the registration and qualification of Physicians and Surgeons.

Section 32 of this Act is as follows:—

“If the registrar make, or cause to be made, any wilful falsification in any matters relating to the register, he shall forfeit a sum not less than one hundred dollars, to be recovered as hereinbefore provided, as to persons practising medicine, surgery or midwifery, illegally.”

The offence created by the section, and for which a penalty is fixed, would appear to be felony under 32 and 33 Vic., chap. 19, sec. 4.

While not recommending that the power of disallowance be exercised with respect to this Act, the undersigned would respectfully recommend that the attention of the Lieutenant Governor of the province of New Brunswick be called to the section for the consideration of his advisers.

Chap. 44. An Act to incorporate the St. John Bridge and Railway Extension Company.

By this Act power is given to the company to bridge the River St. John at such point, at or near the city of St. John, as the company may select for the purpose. It is provided, however, that the bridge shall not interfere with the navigation of the river, and this provision it appears it is the intention to comply with, by building at or near the present suspension bridge, and at a height above the water equal to or greater than the height above the water of the present suspension bridge; and in the consideration of the question as to whether the bridge will be an interference with the navigation of the river or not, it would appear that the legislature has considered the artificial as well as the natural conditions of the river at the place where it is proposed to erect the bridge. As the company, however, are only empowered to build the bridge in case it does not interfere with the navigation of the river, the undersigned would recommend that the power of disallowance be not exercised with regard to this Act.

As to chapters 1 to 18, 20 to 43, and 45 to 74, the undersigned recommends that the power of disallowance be not exercised with respect to these Acts.

A. CAMPBELL,  
*Minister of Justice.*

## NEW BRUNSWICK, 45TH VICTORIA, 1882.

4TH SESSION—24TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 26th February, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th February, 1883.

*To His Excellency the Governor-General in Council :*

The undersigned having had under consideration the Acts of the General Assembly of the province of New Brunswick passed in the session of 1882, begs to observe that he has reserved chapters 9, 69 and 87 for a special report ; but recommends that the remaining Acts, hereinafter enumerated, be left to their operation :—

Chapters 1 to 8, 10 to 68, 70 to 86, 88 to 100.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General on the 6th March, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th February, 1883.

*To His Excellency the Governor General in Council :*

The undersigned has had under consideration the following Acts of the General Assembly of the province of New Brunswick passed in the year 1882, viz.:—

Chap. 9. An Act in amendment of chapter 51 of the Consolidated Statutes of County Courts.

Chap. 69. An Act to incorporate the Fredericton and St. Mary's Bridge Company.

Chap. 87. An Act to revive, continue and amend the several Acts relating to the Courtenay Bay Bridge Company.

The effect of the 1st section of chapter 9, if within the legislative authority of the legislature, is to remove from their offices the judge of the King's County Court, and the judge of the Albert County Court.

This, it is submitted the legislature has no power to do, but as these judges, subsequently to the coming into force of the Act, voluntarily resigned their respective offices, and commissions have been issued making the necessary appointments, the Act may be left to its operation.

By chapter 69 the company thereby incorporated, the Fredericton and St. Mary's Bridge Company, is given authority to bridge the River St. John at Fredericton, and it is provided by the 2nd section that the bridge shall be so constructed, as not to interfere with the navigation of the River St. John.

The 17th section is in the following words, viz.: "Nothing herein contained shall be construed to authorize the company, in the erection of the said bridge, to interfere with the navigation of the River St. John, except so far as may be absolutely necessary for the proper carrying on of the work."

It is clear from the clause that the legislature are of opinion that the bridge cannot be constructed without any interference with the navigation of the river. This interference the legislature has no power to authorize.



By 45 Vic., chap. 37, intituled "An Act respecting Bridges over Navigable Waters constructed under the authority of Provincial Acts," parliament has made provision whereby, on the site being approved by the Governor General in Council, and the other terms of the Act being complied with, bridges constructed under the authority of Acts passed by local legislatures, may become lawful bridges, although they interfere with the navigation of the waters over which they are erected. From the operation of this Act, however, as well as from the operation of the clauses of "The Consolidated Railways Act, 1879," by it repealed, the Rivers St. Lawrence and St. John are excepted. The same exception was made in 39 Vic., chap. 15, repealed by "The Consolidated Railways Act, 1879." There is therefore no authority, except parliament, that can authorize an interference with the navigation of the river St. John.

In 1871 Parliament incorporated a company with power to construct a bridge across the St. John, from Fredericton to St. Mary's, or between the parishes of Kingsclear and Douglas.

That charter has expired by virtue of the limitation contained in the 19th section thereof, and reference is made simply for the purpose of showing that parliament has legislated in the direction of granting an authority, now purported to be given by an Act of a local legislature.

The undersigned recognizes the importance of the Act in question, and would therefore not lightly recommend its disallowance, but he sees no other course open unless the legislature, at its next session, amends the 17th section by striking out the words "except so far as may be absolutely necessary for a proper carrying on of the work, or unless the company, at the coming session of parliament, obtain the sanction to the proposed interference with the navigation of the River St. John."

By chapter 87 the charter of the Courtenay Bay Bridge Company—a company incorporated prior to the union of the provinces—is revived, continued and amended.

A similar Act was passed in 1877, and was, after correspondence with the Department of Marine and Fisheries, allowed to go into operation.

The undersigned recommends that the same course be followed in regard to this Act, but in doing so desires to express the opinion that before acting under it, the company should have the site and plans approved in accordance with the provisions of the Act of Parliament 45 Vic., chap. 37.

The undersigned further recommends that his observations in regard to these Acts, if approved in council, be communicated to the Lieutenant Governor of New Brunswick for the information of his government.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th July, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th July, 1883.

*To His Excellency the Governor General in Council :—*

With reference to the Act of the General Assembly of the province of New Brunswick passed in the year 1882, chapter sixty-nine (69) and intituled :

"An Act to incorporate the Fredericton and Saint Mary's Bridge Company," the undersigned begs respectfully to refer to the report of the Minister of Justice dated the 13th February last, and which was approved by your Excellency on the 6th March last, in which the grounds of objection to the Act in question are set out at length.

In conformity with the Order in Council referred to, the observations of the Minister of Justice in regard to this Act were communicated to the Lieutenant-Governor of New Brunswick for the information of his government. The attention of the

Lieutenant-Governor having since been called to a previous communication had with him on the subject, with a view to ascertain whether any legislation was had during the last session of the General Assembly in regard to chapter 69, of 1882, a report has been received from the Lieutenant-Governor inclosing a copy of a memorandum of his Executive Council on the 30th ultimo, stating that no amendment has been made to the Act, nor is it in contemplation to make any amendment thereto.

There is therefore no object in longer deferring action in this matter.

Under these circumstances and for the reasons indicated in the first mentioned report, the undersigned humbly recommends that the Act of the General Assembly of the province of New Brunswick passed in the year 1882, chaptered sixty-nine (69) and intituled : "An Act to incorporate the Fredericton and Saint Mary's Bridge Company," be disallowed.

H. L. LANGEVIN,

*For Minister of Justice.*

*Proclamation disallowing the Act above mentioned published in the Canada Gazette on the 28th day of July, 1883. Vol. XVII., No. 4, page 187.*

## NEW BRUNSWICK, 46TH VICTORIA, 1883.

5TH SESSION—24TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 25th February, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st January, 1884.

*To His Excellency the Governor General in Council :*

The undersigned begs leave to report upon the Act of the General Assembly of the province of New Brunswick passed in the month of May, 1883.

That he has reserved for a separate report,—chap. 17, intituled : “An Act in amendment of, and in addition to, an Act passed in the 38th year of the reign of Queen Victoria, intituled : ‘An Act to incorporate the town of Moncton,’” and chap. 37, intituled : “An Act to provide for the appointment of a Police Magistrate, and to establish a Lock-up House in Shediac, Westmoreland County.”

Having carefully considered the Acts passed at the said session, the chapters and titles of which are given in the schedule appended hereto, he recommends that they be left to their operation.

A. CAMPBELL,  
*Minister of Justice.*

## SCHEDULE.

Chapters 1 to 16, 18 to 36, and 38 to 83.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 11th June, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st January, 1884.

*To His Excellency the Governor General in Council :*

The undersigned begs leave to report in respect to two Acts of the General Assembly of the province of New Brunswick, passed in the month of May, 1883, chaptered and intituled as follow :—

Chap. 17. “An Act in amendment of, and in addition to, an Act passed in the 38th year of the reign of Queen Victoria, intituled : ‘An Act to incorporate the town of Moncton.’”

Chap. 37. “An Act to provide for the appointment of a Police Magistrate, and to establish a Lock-up House in Shediac, Westmoreland County.”

By the 9th section of chapter 17 it is provided that :—

“All sums of money received by the said police magistrate, or at the said police office, or by the magistrate sitting at the police office in his stead, for fees, fines, penalties, forfeitures or costs incurred and paid under the provisions of any law or statute in force in the said province, or of any by-laws or ordinance of the town council of the town of Moncton, or for any costs whatever by him receivable in any criminal matter whatever, shall be paid over by the said police magistrate, on the first day of every month, not being Sunday or a public holiday, together with an account under oath to be sworn before any justice of the peace (which oath any justice of the



peace is hereby authorized to administer) of all such moneys, to the treasurer of the town of Moncton, to be by him kept and applied for the purposes of the town."

By the 6th section of chapter 37 it is provided that:—

"All fines and penalties imposed by the said district, police or stipendiary magistrate for the said Shediac police district, for any omission or offence under any Act of Assembly of New Brunswick, or under any Act of the Dominion of Canada, where the fines or penalties are not otherwise disposed of, shall be paid out and appropriated by him in manner following:—

"He shall in the first place pay all constables' fees and charges, and after then retaining his own fees, shall out of the balance (if any) pay to the keeper of the said lock-up house, as remuneration for his care and attention, a sum not exceeding in all fifty dollars per annum."

The expression "fines, penalties, forfeitures, and costs incurred and paid under the provisions of any law or statute in force in the said province" in the 9th section of chapter 17 is large enough to include fines, penalties and forfeitures incurred under Acts of the parliament of Canada, while the 9th section of chapter 37, in terms purports to make provision for the application of fines and penalties, which may become payable in respect to offences against Acts of parliament.

It is true that parliament, in repealing so far as it was within its legislative authority, chapter 137 of the Revised Statutes of New Brunswick of summary convictions before justices, excepted section 22 of that chapter from repeal, and declared that it should apply to the Summary Convictions Act of 1869.

Section 22 aforesaid provides that:

"All sums received by any officer under any of the foregoing proceedings shall be paid by him to the county treasurer for county contingencies, except such part thereof as any person may be legally entitled to."

But while parliament has in this way made an exception in favour of New Brunswick with respect to the application of moneys arising from fines and penalties recovered under the Summary Convictions Act of Canada, it has in no way parted with a legislative authority over such application.

In the opinion of the undersigned, section 9, of chapter 17, is open to objection because the expression "law or statute" is not confined to laws or statutes within the legislative authority of the General Assembly, and section 7, of chapter 37, because it in terms makes provision for a matter not within such legislative authority.

The undersigned recommends that in case this report is approved of, the substance of it be communicated to the Lieutenant-Governor of New Brunswick, and that he be invited to call the attention of his government to the said Acts, with a view to their amendment, and that further action in respect of the said Acts be deferred.

A. CAMPBELL,  
*Minister of Justice.*

## NEW BRUNSWICK, 47TH VICTORIA, 1884.

1ST SESSION—25TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th April, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th March, 1885.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the Acts passed by the legislature of the province of New Brunswick in the year 1884.

(1.) Having considered the Acts, chapters 1 to 10, 12, 14 to 18, and 20 to 66, the undersigned recommends that they be left to their operation.

(2.) Chapter 11, intituled: "An Act to reduce the expense of maintaining Government House, and relating to the salary of the private secretary of the Lieutenant Governor," has been made the subject of a separate report.

(3.) By chapter 13, intituled: "An Act respecting the granting of licenses for sale of Spirituous Liquors," provision is made for the collection of license fees on wholesale and retail licenses issued under "The Liquor License Act, 1883" (Canada).

This Act which unless continued by the legislature of New Brunswick at its present session, will expire on the first of April next, is under all the circumstances a fair enough exercise of the recognized power of the legislature to raise a revenue from shop, saloon, tavern and other licenses. A question may possibly arise as to whether the provincial legislature has the right to impose license fees on wholesale licenses, but they have hitherto exercised that power, and the exercise thereof in this Act does not, in the opinion of the undersigned, afford a reason for the disallowance of the Act.

(4.) Chapter 19, intituled: "An Act respecting Law Stamps," makes provision for the collection, by means of stamps, of fees in legal proceedings in the Supreme Court. These fees it is enacted shall, when collected, be paid to the Receiver General of the province, and be under the control and management of the executive government of the province.

The Lords of the Judicial Committee of the Privy Council, in the appeal of the Attorney-General for Quebec *vs.* Reed, from the Supreme Court of Canada, delivered 26th November, 1884, decided that a tax levied in the manner in which the fees under the Act are imposed, is not a direct tax, but an indirect tax, and cannot be imposed by a provincial legislature in aid of the general revenue of the province.

Their lordships did not express any opinion as to whether or not a provincial legislature can authorize the collection of fees in respect of legal proceedings in courts of justice, not for the general purposes of the province, but in aid of a special fund, or of the administration of justice in the province. The matter is, however, of so much importance to the province, and the power to impose fees in this and other cases has been so generally exercised by the provincial legislatures, that it is desirable to give the legislature of New Brunswick every opportunity to amend the Act, so that it may, if that is possible, be brought within the legislative authority of that legislature.

The undersigned respectfully recommends, if this report is approved:—

1. That the Lieutenant Governor of New Brunswick be informed that it is the intention of his Excellency to leave to their operation the Acts before mentioned, and also chapter 13, intituled: "An Act respecting the granting of Licenses for sale of Spirituous Liquors."

2. That the attention of the Lieutenant-Governor be called to the decision of the Judicial Committee of the Privy Council in "*The Attorney-General of Quebec vs.*

Reed," and to the effect of that decision upon chapter 19, intituled : "An Act respecting Law Stamps," and that in the meantime the further consideration of the Act be deferred.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council, on the 4th April, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th March, 1885.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon an Act passed by the legislature of New Brunswick in the year 1884, chaptered 11 and intituled : "An Act to reduce the expense of maintaining Government House, and relating to the salary of the Private Secretary of the Lieutenant-Governor."

This Act provides that the salary of the private secretary of the Lieutenant Governor shall not be paid by the province after the expiration of the term of office of his Honour the present Lieutenant Governor. When, in 1837, the casual and territorial revenues of the Crown, in the province of New Brunswick, came under the control of the legislature of the province, an Act was passed granting to the Crown a yearly sum of fourteen thousand five hundred pounds for the support of the Civil Government of the province. Among the officers on the civil list for whom provision was made by this grant, was the private secretary to the Lieutenant Governor. This Act was in force in New Brunswick at the time of the union, and has never been repealed. After the union the province continued to make provision for the salary of the private secretary, as he was an officer of the province, and not of the Dominion. The amount of the salary was, the undersigned is informed, included in the estimates upon which a vote of the House of Assembly was taken, and that course was continued until the House refused to vote the amount, when the Attorney-General of the province, the Honourable A. R. Wetmore, advised the Lieutenant-Governor that the salary of his secretary was a charge upon the revenues of the province, and ought to be paid ; the Attorney-General also informed the House of Assembly of his view of the law.

That the Lieutenant-Governor should have a secretary cannot, the undersigned thinks, be doubted, and under the circumstances, and the respective responsibilities assumed at the union by Canada and by the province of New Brunswick, the government of Canada had reason to expect that the province of New Brunswick would continue to make provision for the secretary's salary.

The undersigned, therefore, recommends that if this report is approved, the substance of it be communicated to the Lieutenant-Governor of New Brunswick for the information of his government, with an intimation that his Excellency's Government will be gratified if the matter is reconsidered, and provision made for the payment of the salary of the Lieutenant-Governor's private secretary as formerly, and that in the meantime, the further consideration of the Act be deferred.

A. CAMPBELL,  
*Minister of Justice.*



NEW BRUNSWICK, 48<sup>TH</sup> VICTORIA, 1885.4<sup>TH</sup> SESSION—25<sup>TH</sup> GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General on the 16th March, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th February, 1886.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the Acts passed by the legislature of the province of New Brunswick in the session held in the year 1885.

By chapter 1, intituled : "An Act to amend and explain Chapter 19, 47th Victoria, 'An Act respecting Law Stamps,' and the several Acts to which it is in amendment, an attempt has been made by the legislature to avoid the effect of the decision of the Lords of the Judicial Committee of the Privy Council in the case of the Attorney General for Quebec *vs.* Reed, to which attention was called by the Minister of Justice in his report upon the Acts passed by the legislature of the province of New Brunswick in the session held in the year 1884.

Without expressing any opinion as to whether or not, under the decision in the case referred to, this Act is within the legislative authority of the province of New Brunswick, the undersigned is of opinion that it should be left to its operation, and so respectfully recommends.

The undersigned having carefully considered the remaining Acts, chapters 2 to 72 inclusive, is of opinion that the power of disallowance should not be exercised in respect of any of the said Acts, and respectfully recommends that they be left to their operation.

The undersigned further recommends that if this report is approved the Lieutenant-Governor of New Brunswick be informed that it is not the intention of his Excellency to exercise the power of disallowance in respect of any of the Acts passed by the legislature of the province of New Brunswick in the year 1885.

Respectfully submitted,

JOHN S. D. THOMPSON,

*Minister of Justice.*

## NEW BRUNSWICK, 49TH VICTORIA, 1886.

5TH SESSION—25TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by his Excellency the Governor General in Council on the 2nd April, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th March, 1887.

*To His Excellency the Governor General in Council :*

The undersigned having considered the Acts passed by the legislature of the province of New Brunswick, in the session held in the year 1886, chapters 1 to 24, 26, 27, 29 to 90, respectfully recommends that they be left to their operation, and that the Lieutenant Governor of that province be informed thereof.

Chapters 25 and 28 which are not included in the schedule, will be made the subject of a separate report.

J. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice upon Chapters 25 and 28, approved by His Excellency the Governor-General in Council, on the 2nd April, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th March, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the Acts of the legislature of the province of New Brunswick, 49 Victoria (1886), chapter 25, intituled: "An Act to incorporate the Town of Marysville," and chapter 28, intituled: "An Act to incorporate the St. Croix Electric Light and Water Company," authentic copies of which and of the other Acts of the same session, were received by the Secretary of State on the 21st June, 1886.

By the 47th section of the Act 49 Victoria, chapter 25, the town council of the town of Marysville is given power, among other things, to make by-laws: (8) To abate and cause to be removed all public nuisances; (13) to regulate the size of bread; (14) To regulate the anchorage, lading and unlading of vessels and other craft arriving in the town; (17) To punish vice, immorality and indecency in the streets or other places within the town; (23) To restrain and punish all vagrants, drunkards, medics and street beggars, and (35) To prevent the injuring or destroying of trees planted within any of the streets or public grounds of the town.

To the exercise of these and similar powers as a matter of police, subject to the laws of parliament respecting the criminal law, weights and measures, and navigation and shipping, there can, the undersigned thinks, be no objection, and in that view, and believing that such statutes must be construed as indicating an intention of the legislature to confer such police powers only, and not as an attempt to delegate legislative authority over such subjects as those mentioned, the undersigned is of opinion that in this respect the Act may be accepted as not open to serious objection.

By the 48th section of the same Act (49 Victoria, chapter 25), it is enacted that it shall be lawful for any police officer of the said town to take into his custody without warrant, any loose, idle or disorderly person, whom he shall find between the hours of seven o'clock p.m. and six o'clock a.m. lying or loitering in any highway, yard or other place in the said town and not giving a satisfactory account of himself, and also, at any

time of the day or night, to take into his custody without warrant, any person who shall be found drunk or feigning to be drunk, or making any loud bawling, yelling, screaming, singing or shouting in any public street, thoroughfare, alley, road or by-road, or incommoding peaceable passers by, loitering on the said street or highway, and obstructing people by standing across the foot-paths, &c., and keep such persons in custody until they can be taken before a magistrate. Provision is also made for the punishment of the offence by fine and imprisonment.

These provisions are in themselves unexceptionable, and in the absence of legislation by the Parliament of Canada, might perhaps be sustained as police regulations. The ground has, however, been occupied by the Parliament of Canada in the exercise of its power of legislating respecting the criminal law. See Revised Statutes of Canada, c. 157, s. 8, and c. 174, ss. 24 and 28.

In the opinion of the undersigned this section should be repealed.

By the 52nd section of the same Act it is provided among other things, that all fines, penalties or forfeitures recovered before the police magistrate of the town, for any violation of any statute or common law, shall (so far as the same shall not be in conflict with any existing law) be paid to the town treasurer.

In view of the summary jurisdiction exercisable by police magistrates under the criminal law of Canada, it is desirable that in all such cases as this, the language of the statute should show clearly that there was no intention to attempt to dispose of fines, penalties or forfeitures recovered or enforced under the laws of Canada, contrary to any disposition thereof from time to time made by the Parliament of Canada. In this particular, and to this extent this section should, the undersigned thinks, be amended.

By the 21st section of the Act 49 Vic., chapter 28, it is provided as follows:—

“If any person shall lay or cause to be laid any pipe or main to communicate with any pipe or main belonging to the said company, or in any way obtain or use its light or water, without the consent of the directors or their officers appointed to grant such consent, he, she or they shall forfeit or pay to the said company, the sum of twenty dollars, and also a further sum of four dollars for each day such pipe shall so remain, which sum, together with the costs of suit in that behalf incurred, may be recovered by civil action in any court of competent jurisdiction.”

It has been decided that gas (*R. vs. Forth*, L. R. I., C. C. R. 172, *R. vs. White, Dear*, 283) and it appears that water, stored in pipes or reservoirs for the purpose of sale, is capable of being stolen (*Stephen's Digest of the Criminal Law*, (1883) Art. 289). By the Act of the United Kingdom, 45-46 Vic., c. 56, s. 23, electricity is made the subject of larceny. There is as yet no similar provision in Canada, though it is possible that it would be held that such a case fell within the provisions of the 85th section of the Revised Statutes, chap. 164. The section under consideration prescribes a penalty recoverable by civil action, for obtaining or using the company's water or light without its consent. Apart from the doubt as to whether the provision trenches upon the criminal law by imposing a penalty for an act that amounts to larceny, especially where the water or light is fraudulently obtained or used, it is open to the objection that criminal or quasi-criminal provisions should never be inserted in private Acts, if in any way such a course can be avoided. For this reason, and because the provision is unnecessary, the company's right of action for any trespass existing independently of the statute, and the prohibited Act, so far as it is criminal, being punishable by the general criminal law, the undersigned thinks the section should be repealed.

The undersigned, therefore, respectfully recommends that the substance of this report be communicated to the Lieutenant-Governor of New Brunswick, with a view to his advisers being invited to promote legislation to meet the objections suggested, and that in the meantime your Excellency in Council defer taking any action in respect of the two Acts referred to in this report.

All of which is respectfully submitted,

JOHN S. D. THOMPSON,

*Minister of Justice.*



## NEW BRUNSWICK, 50TH VICTORIA, 1887.

1ST SESSION—26TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA 29th May, 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the Acts of the legislature of the province of New Brunswick passed in the year 1887, and begs to recommend that the Acts passed in that session (chapters 1, 2, 5 to 27, 29 to 77) be left to their operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th May, 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts of the legislature of the province of New Brunswick, passed in the year 1887, namely : Chapters, 3, 4, and 28.

Chap. 3. "An Act respecting the Public Health."

Section 12 of this Act provides that local boards of health may make and declare such regulations concerning the entry or departure of boats or vessels at the different ports or places in the province, and concerning the landing of cargoes and passengers from such boats or vessels, or the receiving of passengers and cargoes on board the same, as may be best calculated to preserve the public health.

By "The British North America Act," section 91, the Parliament of Canada has exclusive legislative authority in respect of quarantine, and the establishment and maintenance of marine hospitals, and as this provision would seem to be an entrenchment upon that power the undersigned recommends that the attention of the government of New Brunswick be called to this matter with a view to the repeal of section 12 of chapter 3.

Chap. 4. "An Act respecting the sale of Intoxicating Liquors."

The undersigned begs to call attention to section 73 of this Act, which purports to interfere with the business of brewers and distillers, duly authorized to carry on their business within the Dominion of Canada, under the laws respecting inland revenue. The provisions of that section are as follows :—

"Sections seventy-one and seventy-two shall not prevent brewers and distillers, or other persons duly authorized by the government of Canada, under the laws respecting inland revenue, to manufacture fermented, spirituous or other liquors, from keeping or having any liquor manufactured by him in any building wherein such manufacture is carried thereon, providing such building does not communicate by any entrance with any shop or premises wherein any article authorized to be manufactured under such license is sold by retail, or wherein any broken package of such article is kept."

"(1.) Such brewer, distiller, or other person, is, however, further required to first obtain a license to sell by wholesale under this Act, but a brewer shall not be required in order to obtain such license to procure a petition under section 10, of this Act. The liquor so manufactured by him when sold for consumption within the province, may be sold by the sample or in original packages in any municipality, as well as that in which it is manufactured, and in which a license has been granted to him, but no such sale shall be in quantities less than these prescribed in a wholesale license."

These provisions are similar in spirit to those contained in the Liquor License Act of 1886 of Nova Scotia (section 58), in respect of which the undersigned made a report to your Excellency's predecessor on the 15th September, 1887. In that report he expressed the view founded on the decision of the Supreme Court of Canada in *Severn vs. the Queen*, 2 S.C.R. 71, that the section (of which this is a copy) would probably be held not to be within the legislative authority of Nova Scotia.

In such report he pointed out as follows:—

"The Act contains many provisions for the regulations of the sale of intoxicating liquors, which appear to be clearly within the powers of the legislature. Some of these are important, and the disallowance of the enactment would, without doubt, produce considerable public inconvenience within the province of Nova Scotia. The undersigned, therefore, after careful consideration, recommends that the Act be left to its operation, but that the Lieutenant Governor of the province be requested to call the attention of his advisers again to the Act, with a view to the amendment or repeal of such of its provisions as are of doubtful validity, and especially with a view to the repeal of the second subsection of section 58 before quoted."

The undersigned has observed that during the session of the legislature of Nova Scotia in the present year (1888) an Act was passed authorizing the Governor in Council to refer the constitutionality of the section then being commented on by the undersigned, to the Supreme Court of Nova Scotia, and a case has been prepared and is now before such court for argument.

In view of the probability of a decision at an early day by a court of competent jurisdiction as to the constitutionality of section 73 of the New Brunswick Act, the undersigned recommends, for the same reasons as induced him to make a similar report in respect to the Liquor License Act of Nova Scotia, that the Act be left to its operation.

Chapter 28. "An Act to authorize corporations incorporated by the Parliament of the Dominion of Canada to lend and invest moneys in the province of New Brunswick."

In the year 1886, the legislature of the province of Quebec passed an Act similar to this, 49 and 50 Vic., chap. 39.

The undersigned has the honour to call attention to his report upon that Act dated 28th March, 1887, in which the constitutionality of such Act was discussed.

The observations there made refer to this Act. Inasmuch, however, as the legislatures of Ontario and Manitoba have passed similar enactments which have been left to their operation, the undersigned does not at present deem it proper to advise the disallowance of this Act. He begs, however, to suggest that the Act should be so amended as to repeal any provision discriminating Dominion loaning corporations from such corporations incorporated by the legislature of a province, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of New Brunswick.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## NEW BRUNSWICK, 51ST VICTORIA, 1888.

## 2ND SESSION,—26TH GENERAL ASSEMBLY.

*Petition of the Bell Telephone Company to His Excellency the Governor General in Council respecting Chapter 78.*

*To His Excellency the Governor General of the Dominion of Canada in Council.*

The petition of the Bell Telephone Company of Canada under their common seal—humbly sheweth :

1. That your petitioner the Bell Telephone Company of Canada is a body corporate, duly incorporated and chartered under the laws of the Dominion of Canada, by chapter sixty-seven of the Acts of the parliament of Canada, passed in the forty-third year of Her Majesty's reign entitled "An Act to incorporate the Bell Telephone Company of Canada," by which Act your petitioners were granted certain corporate rights, powers, franchises and privileges as by reference to the said Act at large will appear.

2. That by chapter 98 of the Acts of the parliament of the province of New Brunswick passed in the year 1882, your petitioner's said charter was ratified and confirmed by the said parliament of the province of New Brunswick, and by said Act of the parliament of the said province your petitioners were and are declared to be recognized as a corporation with all the rights, powers, franchises and privileges incidental to corporations by the laws of the said province of New Brunswick, subject to the conditions, provisions and restrictions contained in the charter of your petitioners aforementioned, as by reference to the said Act of the parliament of the province of New Brunswick at large will more fully appear.

3. That under its said charter and the said ratification and confirmation thereof, your petitioner entered upon its business in the said province of New Brunswick, and has expended the sum of fifty thousand dollars in and by the erection and equipment of telephone exchanges and lines in the cities and towns of Saint John, Fredericton, Moncton, Woodstock and Saint Stephen, all in the province of New Brunswick aforesaid, and also erected or caused to be erected posts, lines and apparatus, upon and along the streets of said towns and toll lines connecting outlying places therewith, and your petitioners have also expended large sums of money in and about the operation, management, and control of the said telephone lines and exchanges.

4. That in and by section 4 of the said chapter 67 of the Acts of the parliament of Canada passed in the year 1880, your petitioner's charter it is enacted as follows :

"The said company shall have power and authority to purchase or lease for any term of years, any telephone line established or to be established, either in Canada or elsewhere, connecting or hereafter to be connected with the lines which the company is authorized to construct or to purchase or lease for any term of years the right of any company to construct, any such telephone line ; and shall also have power and authority to amalgamate with, or to lease their line, or any portion or portions thereof, from time to time, to any company or person possessing as proprietor any line of telegraphic or telephonic communication, connecting or to be connected with the company's line, in Canada ; and the company shall also have power to enter into any arrangements with any person or company possessing, as proprietor, any line of telegraphic or telephonic communication, or any power or right to use communication by means of the telephone upon such terms and in such manner as the board of directors may, from time to time, deem expedient or advisable, or to become a shareholder in any such corporation."

5. That by an agreement bearing date the 28th day of November, A. D. 1887, in pursuance of the power and authority granted to your petitioners by said section 4 of your petitioner's charter aforesaid, your petitioners have amalgamated their interests in



the province of Nova Scotia, and in the province of New Brunswick, with the Nova Scotia Telephone Company, a body corporate and duly chartered under the laws of the province of Nova Scotia by an Act of the legislature of the said province of Nova Scotia passed in the fiftieth year of Her Majesty's reign, chapter 100, being a company possessing as proprietor, lines of telephonic communication in the province of Nova Scotia then connecting, or which were shortly afterwards connected with your petitioners' lines in Canada. The said agreement bearing date the 28th day of November, 1887, and an agreement supplemental thereto made in December, 1887, between the same parties, were respectively ratified and confirmed by an Act of the legislature of the province of Nova Scotia passed in the year 1888, entitled: "An Act to amend chapter 100 of the Acts of the Province of Nova Scotia for the year 1887, entitled: 'An Act to incorporate the Nova Scotia Telephone Company, Limited.'" The said agreement and supplemental agreement are fully set out in schedules "A" and "B" to the said Act of 1888, a copy of which with said schedule is hereunto appended, and your petitioners beg leave to refer to the same as if incorporated herein.

By chapter 100 of the Acts of the Parliament of Canada passed in the year 1888, the said Nova Scotia Telephone Company was granted certain authority, rights and privileges for the purpose of extending its operations, and of carrying on a telephone business within and between the provinces of Nova Scotia and New Brunswick. A copy of the said Act of the parliament of Canada is hereunto appended and herewith transmitted.

6. That for the purpose of carrying out the said agreement it is necessary, and your petitioners desire that the said Nova Scotia Telephone Company as the agent of your petitioners under the said agreement, should carry on the business heretofore conducted by your petitioners in the provinces of New Brunswick and Nova Scotia.

That your petitioners desire to exercise in their own right in said province of New Brunswick, the franchises, powers, rights and privileges, granted and conferred by their charter aforesaid, all of which franchises, powers, rights and privileges are still extant, and are intended to be used in the provinces aforesaid by your petitioners, their servants or agents.

That your petitioners are desirous of at once constructing and equipping toll lines in said province of New Brunswick to connect the exchanges of the Nova Scotia company in said province so purchased from your petitioners.

7. That by an Act of the legislature of the province of New Brunswick passed the 6th day of April, 1888 (51 Victoria, chapter 78) intituled "An Act to incorporate the New Brunswick Telephone Company (Limited)," certain persons therein named, and certain other persons, their successors and assigns, were constituted and declared to be a body corporate by the name of "The New Brunswick Telephone Company (Limited)" for the purposes of erecting and maintaining telephone lines throughout the province of New Brunswick, and for the purpose of transmitting by telephone, messages from any point within said province to any other point or points therein for hire, over the wires of the said company, and the said company by the said Act were granted certain other corporate rights and franchises as by reference to the said Act at large will more fully appear.

8. That by section 9 of the said Act of the legislature of New Brunswick (51 Victoria, chapter 78) it is enacted by the said legislature and declared among other things as follows, that is to say:—

"The said company shall have the exclusive right of erecting poles and maintaining telephone communication between the following points for a period of ten years from the passing of this Act, viz.: Between the city of Saint John and the city of Fredericton, and, the town of Woodstock, in the county of Carleton; and between the city of Saint John, and the town of Moncton, in the county of Westmoreland; and between the city of Saint John and the town of Saint Andrews, in the county of Charlotte; and between the said town of Saint Andrews and the town of Saint Stephen, in the said county of Charlotte; provided always, that the said company shall within two years from the passing of this Act, construct, erect and equip telephone communication between these several points, or places between the same; and also provided that this section

shall not apply to or interfere with any lines of telephone actually constructed and operated at the time this Act comes into force."

9. That your petitioners by their directors and agents appeared before the legislature of the said province of New Brunswick, and before a committee of the said legislature while the said Act of the said legislature (51 Victoria, chapter 78) was under the consideration of the said legislature, and objected to and opposed the passing of section 9 aforesaid of the said Act by the said legislature as the said section stood, and demanded and asked that section should be so amended as to eliminate that portion which conferred upon said New Brunswick Telephone Company, the exclusive right of erecting telephone poles, and connecting by telephone between the cities of Fredericton, St. John and Moncton and Saint Stephen, but said legislature passed said Act notwithstanding said protest.

10. That the clause of section 9 of the said Act hereinbefore set out seriously prejudiced the rights and property of your petitioners, and the interest of their shareholders in the respect of the franchises, powers and privileges granted and hitherto enjoyed by and under the charter of your petitioners aforesaid, and the ratification and confirmation thereof by the legislature of the province of New Brunswick aforesaid; in respect of the telephone exchanges and lines and the other estate of your petitioners in the said province of New Brunswick, and also in respect of the aforesaid agreement entered into by your petitioners with the Nova Scotia Telephone Company. Your petitioners are therefore greatly aggrieved by the passing, and strongly object to, and would humbly protest against the allowance of the said Act, or of the said clause of section 9 thereof.

11. Your petitioners submit that the clause of section 9 of the said Act last mentioned gives to the said New Brunswick Telephone Company (limited) exclusive rights and powers to construct telephonic toll lines connecting the very exchanges erected by your petitioners, to wit—the aforesaid exchanges at Saint John, Fredericton, Moncton, Woodstock and Saint Stephen, in derogation of the vested charter and proprietary rights of your petitioners.

12. Your petitioners also submit that the said clause of section 9 of the said Act operates as a forfeiture of the franchise of your petitioners, in so far as the right to construct the said toll lines is concerned, and as such the said clause is contrary to natural justice.

13. Your petitioners further submit that, inasmuch as neither mis-user or non-user of the said charter by your petitioners, nor any other cause or reason for the forfeiture of of the said charter has been shown or was adduced to the said legislature of the province of New Brunswick; and inasmuch as the said clause of section 9 of the said Act is a violation of private charter contract and propriety rights, the said clause is subversive of the first principles of the common and parliamentary law of Canada, and is *ultra vires* of the said legislature and unconstitutional.

14. That while the said Act (51 Victoria, chapter 78) was under the consideration of the legislature of the province of New Brunswick, and during the proceedings had and taken at that time by your petitioners, as set forth in paragraph 9 of this petition, your petitioners, by their solicitors and agents, submitted to the Hon. A. G. Blair, Attorney General of the province of New Brunswick, the brief of authorities for your petitioners' contentions in respect to the said Act, which is hereunto appended, and to which your petitioners crave leave to refer, if authority for their propositions and contentions herein made should be deemed necessary.

15. Appended hereunto is also a copy of a report of the debate on the bill to incorporate the New Brunswick Telephone Company, had in the legislature of the province of New Brunswick during the consideration of the said bill by said legislature. Said report is taken from the columns of the *St. John Sun*, newspaper, of the 29th March, 1888. Copies of the various Acts referred to herein, are also hereunto appended and herewith transmitted.

16. Under the circumstances aforesaid, and having regard to the vested rights and interests of your petitioners, and to the specially injurious character of the said clause of the said 9th section of the said Act, as the same affects such vested rights and



interests, and having regard also to the character of such portion of the said section, and to the contentions hereinbefore contained, your petitioners submit that they are entitled to claim of your Excellency due consideration and protection of their rights, privileges and interests aforesaid.

Your petitioners therefore humbly pray that the said Act of the Parliament of the province of New Brunswick (51 Victoria, chapter 78) or in the alternative that the aforesaid portion of section 9 of said Act, or the whole of section 9 thereof, may be disallowed.

And your petitioners will ever pray, etc.

The Bell Telephone Company of Canada.

By C. F. SISE,  
Vice-President.

The common seal of the petitioners was hereunto  
affixed in the city of Montreal, on the 25th  
day of August, 1888, in the presence of

CHAS. P. SCLATER,  
Secretary-Treasurer.

*Petition of Grand Lake Mining Company to His Excellency the Governor General  
respecting Chapter 5.*

*To the Right Honourable Sir Frederick Arthur Stanley, &c., &c., Governor General,  
respecting Chapter 5.*

The petition of the Grand Lake Mining Company, incorporated by memorandum of association under the Act of the General Assembly of the province of New Brunswick, relating to corporations, humbly sheweth:

1. That on the tenth day of June, A.D. 1870, one Caleb W. Wetmore applied for and received from the province of New Brunswick, seventeen (17) mining leases of lots in Queen's and Sunbury Counties, in said province, containing six hundred and forty acres each, transferring to him said lots for mining purposes for a period of twenty-five years from the said date thereof, with a covenant of renewal for a further term of twenty-five years at the expiration thereof or payment for improvements.

2. That about the year 1871 your petitioners, the above named Grand Lake Mining Company, purchased said leases from said Caleb W. Wetmore, for the sum of five thousand dollars, and said leases were afterwards transferred to them and duly recorded.

3. That there is a thin seam of coal extending over about two-thirds of the surface of said lands, and said company have expended above four thousand dollars in boring for an under seam, but as yet been unsuccessful in finding such under seam.

4. That there are no buildings on said lots of land, but all conditions and covenants in said leases have been performed, according to the terms thereof, and there is not any royalty due and unpaid thereunder.

5. That at the session of the legislature of the province of New Brunswick, held in the year 1887, an attempt was made to introduce an Act that would cause said leases to be forfeited, but your petitioners having been informed of the same, it was opposed and prevented, but at the last session of said legislature an Act was introduced by the Surveyor-General the Hon. Mr. Mitchell, and passed without any notice or intimation to your petitioners, until it had gone through both branches of said legislature.

6. That section three of said Act reads as follows:—"Mining leases or licenses heretofore issued may, after the expiration of five years from the date of issue of such lease or license, or of the date of issue of any renewal thereof, by the order of the Governor in Council, be declared forfeited, cancelled and annulled, upon its being made to appear to the Governor in Council:—

(1.) That no minerals have been secured upon such lease or license for twelve months continuously whereby a royalty has accrued to the Crown; or



"(2.) That minerals have been raised upon such lease or license, and a royalty has accrued due thereunder, but being due for a period of six months has not been paid, or

"(3.) That any other condition or covenant contained in any lease or license has not been performed according to the terms thereof; and

"(4.) That a month's notice in writing has been given by or on behalf of the surveyor general to the lessee or licensee, or when he has registered an assignment of his license in the registry office of deeds, for the county in which the licensed lands lie, to the assignee, of his intended application to the Governor in Council for an Order in Council for the forfeiture and cancellation of such lease or license, which notice shall state the time and place, when and where the application is to be heard."

7. That there is no stipulation or condition in said leases compelling the securing upon the same for twelve months continuously, or any other period, any minerals on which a royalty would accrue under said leases to the Crown, nor is there any clause of forfeiture in said leases for not securing minerals.

8. That your petitioners admit that no coal or other minerals have been for the last twelve months taken or mined on said lots, whereby a royalty has accrued to the Crown, and your petitioners say for the following reasons:—

1. That your petitioners could not, except at a large expense, get the necessary machinery to work with any profit so thin a seam of coal, and not having easy access to a market, have previously considered such expenditure unadvisable.

2. That your petitioners have for some time been awaiting the completion of the Central Railway, which was chartered about the year 1871, but the construction thereof is not yet finished, with the expectation of a ready means of transportation of their coal to a market.

That said Central Railway and also the Short Line Railway, both now being built and running in close proximity to said lands, will, as your petitioners expect, open up the country, and render their said lands more valuable, and make further expenditure which is in contemplation by your petitioners justifiable.

9. That sections 9 and 10 of said Act provides for payments for improvements out of public money, but your petitioners having put no improvements on said lands (excepting the boring as above alleged would be so considered) such Act, if allowed, would, as your petitioners are advised, cause said leases to be forfeited before the time stated in said leases, and they will wholly lose the said sum of five thousand dollars paid for the purchase thereof, and the sum of four thousand dollars expended by them in boring and besides will lose the benefit of the covenant for renewal, contained in said leases as before set forth.

10. That the Hon. Attorney General of said province was on the 31st May last, notified that a petition to disallow said Act or a part thereof would be presented.

Your petitioners therefore humbly pray that said section six and all other sections in said Act that interfere with, limit or determine any rights or privileges granted in and by such leases may be disallowed

And as in duty bound will ever pray.

Dated June 23rd, A. D. 1888.

Grand Lake Mining Company.

W. B. WALLACE,  
*Solicitor*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 30th, January 1889.*

DEPARTMENT OF JUSTICE, Ottawa, January 28th, 1889.

*To His Excellency the Governor General in Council.*

The undersigned having had under consideration the Acts of the legislature of the province of New Brunswick, passed in the session held in the year, 1888, chapters 1, 2, 4, 6 to 29, 31 to 33, 35 to 52, 54 to 77, 79 and 80, respectfully recommends that they be left to their operation.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 30th January, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th January, 1889.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report on chapter 30, intituled : "An Act to incorporate the Channel Subway Company," passed by the legislature of the province of New Brunswick in the session of 1886, an authentic copy of which was received by the Secretary of State on the 6th June, 1888.

This Act recites that it has been considered that the construction of a subway or subways beneath the harbour of St. John, to connect with the east and west sides of the city of St. John for the passage of foot passengers, horses, carriages, street cars and other vehicles would be of great public utility, and proceeds to create a corporation for the purpose of excavating, constructing and operating such subway, but so as not to interfere with the navigation of the harbour of St. John.

By "The British North America Act" public harbours, of which the harbour of Saint John is undoubtedly one, are vested in the Crown for the use of Canada.

The Supreme Court of Canada has decided in *Holman vs. Green*, S.C.R., vol. 6, p. 707, that the land covered with water in the public harbours of Canada, belong to the Crown for the use of Canada, and not to the Crown for the use of the province in which such land lies. It therefore follows that the Act in question almost exclusively relates to the public property of Canada, and authorizes an interference with that property.

This Act may also be considered as infringing on the power of the Parliament of Canada, exclusively to make laws in respect to navigation, while it professes not to authorize the company to interfere with navigation, it authorizes the construction of a work which may to some extent interfere with navigation and, at any rate, without the sanction of the authority which alone can determine whether the work will interfere with navigation or not.

He therefore recommends that this Act be disallowed unless the Lieutenant-Governor of the province is able to assure your Excellency, before the time for disallowance expires that the Act will be, or has been repealed.

The undersigned recommends that a copy of this report if approved, be transmitted to His Honour the Lieutenant Governor of New Brunswick.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council, on the 30th January, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th January, 1889.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration his report on chapter 78, intituled : "An Act to incorporate the New Brunswick Telephone Company," passed by the legislature of the province of New Brunswick in the session of 1888, an authentic copy of which was received by the Secretary of State on the 6th June, 1888.

In the year 1880, the Canadian Parliament (cap. 67) granted a charter to the Bell Telephone Company of Canada, giving it power, among other things, to construct and maintain lines of telephone along the sides of streets or any public highway in Canada, and that in 1882 the company so incorporated obtained from the legislature of New Brunswick an Act expressly recognizing and ratifying the rights acquired by it from the Canadian Parliament, and expressly giving it power to construct, erect and maintain its lines of telephone throughout the province of New Brunswick.

It is stated in a petition to your Excellency, from the Bell Telephone Company of Canada, dated the 25th day of August last, that upon the passing of that Act, the Bell Telephone Company of Canada entered into its business in the province of New Brunswick, and expended the sum of \$50,000 in the erection and equipment of telephone exchanges and lines in the cities and towns of St. John, Fredericton, Moncton, Woodstock and St. Stephen.

The Bell Telephone Company have a right under this charter to extend their operations in the province of New Brunswick, under the powers granted to them, both by the Dominion Parliament and the New Brunswick legislature.

At the last session of the New Brunswick legislature, "The New Brunswick Telephone Company (Limited)" obtained from the New Brunswick legislature, the charter which is now the subject of discussion. This charter is without objection, except in respect to the 9th section, which provides as follows :—

"The said company shall have the exclusive right of erecting poles and maintaining telephone connection between the following points, for the period of ten years from the passing of this Act, viz., between the city of Saint John and the city of Fredericton, and the town of Woodstock, in the county of Carleton, and between the city of Saint John and the town of Moncton, in the county of Westmoreland, and between the city of Saint John and the town of Saint Andrews, in the county of Charlotte, and between the said town of Saint Andrews and the town of Saint Stephens, in the said county of Charlotte; provided always that the said company shall, within two years from the passing of this Act, construct, erect and equip telephone communication between these several points, or places between the same, and also provided that this section shall not apply to, or interfere with, any lines of telephone actually constructed and operated at the time this Act comes into force. The rates or charges imposed by the said company for the transmission of messages over the lines of the said company within this province shall be subject to regulation of the Lieutenant-Governor in Council, who shall have the right to fix the same from time to time."

The Act under consideration, therefore, interferes with and restricts the operation of an Act of the parliament of Canada, and has the effect likewise of materially diminishing the value of franchises, which the New Brunswick legislature had previously granted to another company.

The undersigned therefore recommends that the Act under consideration be disallowed, unless his Honour the Lieutenant-Governor of New Brunswick is able to inform your Excellency that the provisions of the Act under consideration, which have this effect, have been or will be repealed, and he recommends that a copy of this report if approved, be transmitted to his Honour the Lieutenant-Governor of New Brunswick.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*



*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 15th March, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1889.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration the following observations on chapter 5, intituled : " An Act further relating to mines and mining leases," passed by the legislature of the province of New Brunswick in the session of 1888, an authentic copy of which was received by the Secretary of State on the 6th of June last.

Section 3 of this Act provides as follows :—

" Mining leases or licenses heretofore issued or which are hereafter issued may, after the expiration of five years from the date of issue of such lease or license, or of the date of issue of any renewal thereof, by the order of the Governor in Council, be declared forfeited, cancelled and annulled upon it being made to appear to the Governor in Council :

" 1. That no minerals have been raised upon such lease or license for twelve months continuously whereby a royalty has accrued to the Crown ; or

" 2. That minerals have been raised upon said lease or license and a royalty has accrued due thereunder, but, being due for a period of six months, has not been paid ; or

" 3. That any other condition or covenant contained in any lease or license has not been performed according to the terms thereof ; and,

" 4. That a month's notice in writing has been given by or on behalf of the surveyor general to the lessee or license, or when he has registered an assignment of his license in the registry office of deeds for the county in which the licensed lands lie, to the assignee, of his intended application to the Governor in Council for an Order in Council for the forfeiture and cancellation of such lease or license, which notice shall state the time and place when and where the application is to be heard ?"—and section 8 provides that " immediately upon such forfeiture " being made and registered, the Surveyor General shall be deemed to have retaken possession on behalf of the crown," of the leased premises without inquest of office.

Objection has been made to the Act by persons holding leases of mining lands under the provisions of former statutes, and the attention of the undersigned has been called to the terms of these leases granted by the provincial authorities of New Brunswick which this legislation would affect.

They contain no provision such as the statute under consideration impose, and the enactment would therefore impose new restrictions on the lessees, with the penalty of the forfeiture in case of non-compliance.

Such legislation seems to be at variance with the principles of justice, and seems to invade the rights of property which it is so important to preserve, for the credit of the whole country, and for the safety of private persons.

If it is desirable that a province should resume any part of its patrimony the methods adopted should be those which recognize and provide for the rights which have accrued under the sanction of the crown.

The undersigned therefore, respectfully recommend that his Honour the Lieutenant-Governor of New Brunswick, be informed that in the opinion of your Excellency's government, it is desirable that the statute in question should be amended in such a way as to remove the objectionable features indicated. He recommends that a copy of this report, if approved, be transmitted to his Honour the Lieutenant-Governor of New Brunswick.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th February, 1889.*

DEPT. OF JUSTICE, OTTAWA, 28th January, 1889.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration his report on certain of the Acts passed by the legislature of the province of New Brunswick in the session of 1888, authentic copies of which were received by the Secretary of State on the 6th June last.

Chapter 34, "An Act to incorporate the Tobique River Boom Company."

It would appear from section 10 of this Act that the Tobique River is a navigable stream, and, if this is the case, the Act is an interference with the exclusive legislative authority of the parliament of the Dominion to make laws respecting navigation, and it may also be legislation in respect to the public property of Canada, inasmuch as rivers, under the provisions of the British North America Act, are vested in Canada.

The undersigned has asked of the Minister of Public Works a report as to the character of the Tobique River. In the meantime, however, inasmuch as similar Acts in the province of New Brunswick have been left to their operation, the undersigned does not recommend that the power of disallowance should be exercised in respect to this Act.

Chapter 53. "An Act to continue the Fredericton Boom Company and to consolidate and amend the several Acts relating to the said company."

Chapter 38 of the Acts of the legislature of New Brunswick passed in the 38th year of Her Majesty's reign (1875) was an Act to amend the original Act of incorporation of this company, and was reported on by the Honourable Edward Blake, when Minister of Justice, in a report dated the 16th October, 1876. In view of that report, which recommended that chapter 38 of 1875 should be left to its operation, and in view of the Act now under consideration being merely a continuance and consolidation of the previous Acts, which have been allowed to go into operation, the undersigned recommends that the same course be adopted in respect to this Act, while entertaining much doubt as to the validity of many of its provisions.

Chapter 81 "An act to incorporate the town of Campbellton."

Section 47 of this Act enumerates the subjects in respect to which the town council may make by-laws. Among these are the following :

14. The power to regulate the anchorage, lading and unloading of vessels, and other craft arriving at the said town.

17. The enforcement of the due observance of the Lord's Day, commonly called Sunday, and punishment of vice, immorality and indecency in the streets or other places within the said town.

23. The restraining and punishing of all vagrants, drunkards, mendicants and street beggars.

The subject referred to in the 14th article is clearly beyond the competency of a provincial legislature, having undoubted reference to navigation and shipping, and the management and control of the harbour, those being subjects exclusively assigned to the Dominion parliament.

The undersigned recommends that the attention of his Honour the Lieutenant-Governor of New Brunswick be called to this Act, with a view to the repeal of subsection 14 of section 47.

The provisions of subsections 17 and 23 of the same section also relate to matters which are within the control of the parliament of Canada, and which have been legislated on by that parliament. They can only be considered valid as authorizing regulations in aid of the enforcement of the Acts of the federal parliament.

The undersigned recommends that a copy of his report, if approved, be transmitted to his Honour the Lieutenant-Governor of New Brunswick.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## NEW BRUNSWICK, 52ND VICTORIA, 1889.

3RD SESSION—26th GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 28th June, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1890.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to recommend that all of the following Acts passed by the General Assembly of the province of New Brunswick, in the session thereof, held in March and April, 1889, chapters 1 to 6, 8 to 22, 24 to 26, 28 to 72, be left to their operation.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th July, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1890.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration his report on the following Acts, passed by the legislature of the province of New Brunswick in the session of 1889.

Chap. 7. An Act respecting the executive administration of the laws of this province.

The undersigned has in a report bearing even date herewith, upon the legislation of the Province of Quebec, 1889, dealt at length with the questions raised by this Act, but for the reasons in such report stated, he recommends that this Act be left so its operation.

Chap. 23. "An Act respecting certain criminal courts."

This Act constitutes a judge of every county court, a court of record for the trial of persons under the provisions of the Speedy Trials Act, which at a recent session of parliament was extended so as to apply to the provinces of Prince Edward Island, Nova Scotia and New Brunswick, and is within the competency of a provincial legislature under the provisions of "The British North America Act," section 92, article 14.

Section 4 of the Act however, provides that the Lieutenant-Governor in Council may appoint stipendiary or police magistrates within any county.

The undersigned again desires to express his doubts as to the right of a Lieutenant-Governor to appoint, or of a provincial legislature to authorize the appointment of, justices of the peace or other judicial officers. The question is one of difficulty and there have been decisions both ways, but no final court of appeal has expressly formulated a judgment upon it. It is contended on the part of the provinces that the power in question is vested in the legislatures by virtue of their power to "exclusively make laws in relation to the administration of justice in the province including the constitution, maintenance, and organization of the provincial courts, both of civil and criminal jurisdiction," and in a recent case the court, after intimating that this provision was sufficient to confer the necessary authority, went on to observe that if there were any doubt



about that, there is no doubt but that the provincial legislatures have assumed the right to pass laws providing for the appointment of justices of the peace, and that justices of the peace, police and stipendiary magistrates have been appointed in pursuance of such laws, and that the Dominion Government has never in any way, or at any time interfered with any such appointments, and that the Parliament of Canada has, from time to time since the passing of "The British North America Act" recognized the right so assumed and the appointments so made, and that the question must be taken to be set at rest by the action of the Parliament of Canada.

Without dealing with this subject at length, the undersigned deems it to be his duty to express his dissent from what may be supposed to be an inference fairly to be drawn from this argument that the interpretation of "The British North America Act" can in no way be affected by subsequent legislation by parliament, or the legislatures, or by any action of the government.

No legislative body can, by legislation, increase or diminish the authority conferred upon it by the constitution; nor can any expression of opinion or course of legislative action by either, afford any conclusive or even satisfactory guide to its interpretation.

No individual in Canada can be stopped from asserting or enforcing his rights, or his objections under that Act, by reason of any action on the part of the Parliament of Canada or of the legislatures. No person in Canada can be bound by acquiescence in unconstitutional legislation on the part of governments, even if such acquiescence have occurred.

The undersigned has been unable therefore to regard the decision referred to, as disposing of the objections which arise to the appointment of such magistrates by the provincial authority.

After all that has transpired in connection with this subject, it is evident that these questions must be left to be decided by judicial authority, and the undersigned does not therefore recommend in regard to such Acts the exercise of the power of disallowance.

Chap. 27. "An Act to unite the city of Portland with the city of St. John, in the city and county of St. John, and to amend the charter of the city of St. John, and the law relating to civic government."

This is an Act which unites the cities of St. John and Portland, and provides for the government of the new corporation.

Several of the existing statutory provisions, relating to the two cities, have been incorporated in this Act, and the Act is substantially a consolidation of existing legislation.

The undersigned would call attention to the provisions relating to the police court and to the city court, and would refer, in connection with the appointment of the police magistrate, to his observations in reference to chapter 23.

The undersigned recommends that the Act be left to its operation.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## NEW BRUNSWICK—53RD VICTORIA, 1890.

1ST SESSION—27TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th April, 1891.

*To His Excellency the Governor General in Council :*

The undersigned having considered the Acts passed by the legislature of the province of New Brunswick at the session held in the year 1890, the chapters 1 to 46, 48, 49, 51 to 59, 61 to 63, 65 to 72, 74 to 79, and received by the Secretary of State on the 10th day of July last, respectfully recommends that they be left to their operation, and that the Lieutenant-Governor of that province be so informed.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

NOTE.—No Report appears to have been made upon chapters 47, 50, 60, 64 and 73.

## NEW BRUNSWICK—54TH VICTORIA, 1891.

2ND SESSION—27TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 9th August, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th May, 1892.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to recommend that all of the Acts of the legislature of the province of New Brunswick, passed in the year 1891, except chapters 13, 18 and 48, in respect of which the undersigned has specially reported, and comprising sixty-four Acts, be left to their operation.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th August, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th May, 1892.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon certain Acts passed by the legislature of the province of New Brunswick on the 16th day of April, 1891.

Chapter 13. "An Act to enable Aliens to acquire, hold and convey Real Estate in this Province."

This Act purports to empower aliens to acquire and dispose of real and personal property in the province.

By "The British North America Act" the right of legislation in regard to aliens is vested in the Dominion Parliament, and in view of the undersigned it is very questionable whether the rights, purporting to be created by this Act, can be obtained by the legislation of a provincial legislature. The undersigned does not, however, deem that any public benefit would accrue were the power of disallowance exercised with respect to this Act, and he therefore recommends that the same be left to its operation.

Chapter 18. "An Act respecting Railways."

This Act is similar in terms to the Dominion Railway Act, which regulates Dominion railways, and to several provincial Acts regulating provincial railways. It purports to apply only to railways, which are subject, or which render themselves subject to the legislative authority of the legislature of the province, and its provisions are in the main unquestionably within the powers of a provincial legislature.

The undersigned deems it right, however, to call attention to section 9 of the Act, which purports to authorize a company to take possession of "so much of the public beach or of the land covered with the waters of any lake, river, stream, or canal, or of their respective beds, as is necessary for the railway."

Section 72 provides that if a railway is carried across a navigable river or canal, a draw or swing bridge is to be constructed, and to be operated under the regulations of the Lieutenant-Governor in Council. Sections 73 and 75 make provisions in reference to railways constructed over navigable rivers, canals or streams. The undersigned is of opinion that a provincial legislature has no jurisdiction to authorize the construction of any structure that would in any way affect the navigability of any of the navigable rivers or waters of Canada, and that the sections in question, in so far as they infringe in that particular, are *ultra vires*. In view, however, of the fact that provincial railways may, upon application to the federal authorities, obtain the rights and privileges purporting to be given by the said Act, and that the Act as a whole is beneficial to the public interest, the undersigned recommends that the same be left to its operation.

Chapter 48. "An Act to extend the powers of the Madawaska Log Driving Company (of Maine) to the provincial waters of the River St. John above Grand Falls."

It would appear that in the year 1891, certain persons were incorporated by the legislature of the state of Maine, under the name of the "Madawaska Log Driving Company," to drive down on the St. John River until they reached the international boundary. This Act purports to give to that company a legal corporate status in the province of New Brunswick, and empowers it to continue its operations in the provincial waters of the River St. John, down to Grand Falls in the province. It may be doubted whether this Act is *intra vires* of a provincial legislature, as the company in question is not a company with provincial objects merely, but would appear to be an "undertaking" extending beyond the limits of the province. (See B. N. A. Act, section 92, articles 10 and 11).

The undersigned, however, considers that the point now raised, may, if raised at all, be taken in a court of law, and as no public object would be benefited by its disallowance, he recommends that it be left to its operation.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*



## NEW BRUNSWICK—55TH VICTORIA, 1892.

3RD SESSION—27TH GENERAL ASSEMBLY.

*His Honour the Lieutenant-Governor to the Hon. Secretary of State.*

GOVERNMENT HOUSE, FREDERICTON, N. B., 18th May, 1892.

SIR,—I have the honour to transmit herewith, a certified copy of an Act to declare “the rights of the Crown as represented by the government of the province in certain public lands and property” passed by the House of Assembly and Legislative Council, and reserved by me for the signification and pleasure of his Excellency the Governor General, on the 7th day of April last.

I do not desire to express any opinion as to the legal rights involved, but I venture to state that the appropriation of the proceeds of the proposed sale of land, being a portion of the Government House property, to the erection of a new building, or in the repair, plumbing and heating of the old building, and thereby making it not only habitable, but economical as a residence, would be in the interest and comfort of my successors in office.

I have also the honour to inclose a memorandum from the Acting Attorney General, in reference to the provisions of the Act referred to.

I have, etc.,

S. L. TILLEY.

*Memorandum of the Solicitor General and Acting Attorney General for the information of His Honour the Lieutenant-Governor, in reference to the Bill “An Act to declare the rights of the Crown as represented by the Government of the Province in certain lands and property,” which, on the 7th day of April last, was reserved by His Honour for the signification of the pleasure of His Excellency the Governor General.*

It will be seen by a reference to the third schedule of the British North America Act, that among the public works and property which are to be the property of Canada are, custom-houses, post offices, and all other public buildings, except such as the government of Canada appropriate for the use of the provincial legislatures and governments. The property known and described as “Government House property,” referred to in the said bill, was appropriated for the use of the provincial government of New Brunswick, at the time of the union, and being so appropriated, was thereby accepted, under and by virtue of the said third schedule, from the provincial public works and property, declared to be the property of Canada, and consequently has continued to be and is, the property of the province.

It seems clear to the undersigned that this is the proper construction of the British North America Act.

It will be observed, however, from a perusal of the bill, that it recognizes an obligation on the part of the provincial government to devote the proceeds of the sale of the property, if disposed of, to the providing of a suitable residence for the Lieutenant-Governor and provides that until the proceeds are appropriated to this purpose, the same shall be placed on deposit at interest to the credit of a special account in a chartered bank, to be named by the Governor in Council.

WILLIAM FUGSLEY,  
*Solicitor General and Acting Attorney General.*

Dated May 17th, 1892.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th February, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th January, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has had referred to him a communication from his Honour the Lieutenant-Governor of New Brunswick, dated 16th May, 1892, inclosing a bill, entitled "An Act to declare the Rights of the Crown as represented by the government of the province in certain Lands and Property," passed by both houses of the legislature on the 7th April last, but reserved by his Honour for the signification of the pleasure of your Excellency.

The bill in question, after reciting that the property known and described as "government house property," situate in the city of Fredericton, was appropriated for the use of the provincial government of New Brunswick at the time of the union, and being so appropriated, was thereby excepted, under and by virtue of the third schedule of the British North America Act, from the provincial public works, and property, to be declared to be the property of Canada, and in consequence thereof has continued to be and is the property of the province; and after further reciting that a question might be raised as to the title of the province to such property and to remove doubts and to declare the rights of the crown as represented by the government of the province therein, it was deemed desirable to pass a declaratory Act on the question, proceeds as follows :—

"It is hereby declared that the right and title to the property situate in the city of Fredericton, known and described as the government house property, is vested in and belongs to the crown, as represented by the government of the province, and that the said government of the province possesses and enjoys full power and lawful authority to grant and convey the same as fully, and to the same extent, as other crown lands and property in this province, may be granted and conveyed by the government thereof."

The bill by its second and last section directs that any proceeds from the sale of property shall be used and applied for the sole purpose of providing a suitable residence for the Lieutenant-Governor, and that in the meantime such proceeds should be placed on deposit to the credit of a special account for this purpose.

In transmitting the bill to your Excellency's government, his honour stated that he did not desire to express any opinion as to the legal rights involved, but intimated that the appropriation of the proceeds of the proposed sale as specified in the bill would be in the interest, and for the comfort of his successors in office.

The undersigned is unable to agree with the view of the law and facts in which the bill seems to have been framed.

Under section 108 of the British North America Act, and the third schedule thereto "customs houses, post offices and all other public buildings, except such as the government of Canada appropriate for the use of the provincial legislature and governments, are declared to be the property of Canada." In order, therefore, to change the title of the property in question from Canada to the province, there must have been an appropriation of the property by the government of Canada for the use of the province, and until such appropriation was made, the property remained in Canada. There was, however, an appropriation on the part of Canada. On the 11th day of February, 1870, an order of a predecessor of your Excellency in Council was passed, appropriating the property known as "the government house" to the use of the government and legislature of the province of New Brunswick.

In the opinion of the undersigned that Order in Council constituted an appropriation of the property in question within the meaning of the statute, changing its character, and converting it *sub modo* into public property of the province.

It did not, the undersigned thinks, vest an absolute title in the crown in right of the province, but gave the use thereof to the provincial authorities for the purpose specified in the Order in Council.

The undersigned cannot assent that this matter is free from doubt, but he submits that such doubt as may exist should not be set at rest by the statute of the province, asserting the provincial view, much less by such an enactment being passed by the legislature and assented to by your Excellency.

The legislature of the province might well authorize the sale of the property when the right of the Dominion should be determined, but the right of the Dominion should be left by your Excellency to be dealt with by the Parliament of Canada.

For these reasons, the undersigned humbly recommends that no action be taken upon the reserved bill, but that the views expressed in this report be communicated to his Honour the Lieutenant-Governor of New Brunswick.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 30th May, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of New Brunswick, in the fifty-fifth year of Her Majesty's reign (1892) chapters 1 to 64 inclusive, received by the Secretary of State for Canada on the first day of June, 1892, and he is of the opinion that they are unobjectionable and may be left to their operation.

Respectfully submitted,

J. A. OUIMET,  
*Acting Minister of Justice.*



## NEW BRUNSWICK—56TH VICTORIA, 1893.

1ST SESSION—28TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th March, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st March, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of New Brunswick in the fifty-sixth year of Her Majesty's reign (1893), chapters 1, 2, 4 to 44, 46 to 48, 70 to 77, 79 to 88, received by the Secretary of State for Canada, on the 29th day of June, 1893 ; and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts, viz., chapters 3, 45, 69 and 78, have been reserved for a separate report.

The undersigned also recommends that, if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor of the province for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th March, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st March, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts passed by the legislature of the province of New Brunswick in the fifty-sixth year of Her Majesty's reign (1893) received by the Secretary of State for Canada on the 29th day of June 1893, as follows :—

Chap. 3. "An Act in addition to and in amendment of Chap. 20, Consolidated Statutes of 'Board of Works.'"

Section 3 enacts that the chief commissioner of public works of the province may by himself, his engineers, agents, workmen and servants, among other things, alter the course of any river, canal, brook, stream or water-course, and divert or alter, as well temporarily as permanently, the course of any such rivers, &c.

Chap. 45. "An Act for supplying the city of Moncton with water."

Section 7 provides that, for the purpose of obtaining a supply of water, the city council is authorized to enter upon all lands within the counties of Westmoreland and Albert, and to enter upon the beds of any river or rivers in those counties, and build dams, reservoirs or other works, and cause the water to overflow the land bordering on such rivers, and to take therefrom such quantity or quantities of water as may be required.

The undersigned desires to point out that a provincial legislature cannot authorize the diversion or occupation of the beds of rivers which, under the "British North

America Act," became a part of the public property of Canada. Provisions such as those in question would, however, apply to rivers which at the time of the union were the subject of private ownership, and, further, the powers referred to might be exercised as to the rivers, the property of Canada, upon obtaining the necessary authority from the Dominion.

Chap. 69. "An Act to incorporate the Fredericton, Gibson and Marysville Electric Railway Company."

Section 2 enacts that the company shall have power, among other things, to construct and maintain a bridge across the River St. John between the city of Fredericton and the parish of "St. Mary's" in the county of York, at such place as may be by them deemed advisable; provided that the said bridge shall not interfere with the navigation of the river, and with the consent of the government of the province.

The undersigned observes that, to the extent which the River St. John is vested in the Dominion under "The British North America Act," this provision is *ultra vires* of the provincial legislature, and, in any event, since it relates to a navigable river, it can only have effect subject to the legislation of parliament with regard to the construction of works in navigable waters. So far as the latter observation is concerned, however, it will be open for the company to exercise the powers in question upon, complying with chapter 92 of the Revised Statutes of Canada, and if any question should arise as to the title to the river, it may be conveniently determined by the courts.

Chap. 78. "An Act to incorporate the New Brunswick Trust and Loan Society."

This statute, among other provisions, empowers the society to lend and advance money by way of loan or otherwise, for such periods as it may deem expedient, upon real or personal security, or both, and upon public securities, upon such terms and conditions as the society may consider satisfactory or expedient; also to act as an agency association for the interest and on behalf of others, who shall entrust it with money for that purpose, and either in the name of the society or such others, to lend and advance money to any person or persons upon such securities as have been mentioned, and upon such terms as to the society shall appear satisfactory; also to receive money on deposit for such periods, and at such rate of interest as may be agreed upon. The society is also empowered to stipulate for, and to demand and receive in advance, the interest from time to time accruing on any loans granted by the society.

It appears to the undersigned that the powers so conferred, or some of them, may relate to banking, which is one of the subjects for Dominion legislation.

The undersigned considers, however, that any question which may arise as to the powers of the company may be conveniently determined by the courts, and he would not, therefore, recommend disallowance.

The undersigned recommends that the statutes mentioned in this report be left to their operation, and that a copy of this report, if approved, be sent to the Lieutenant Governor of the province for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## NEW BRUNSWICK—57TH VICTORIA, 1894.

2ND SESSION—28TH GENERAL ASSEMBLY.

*His Honour the Lieutenant Governor of New Brunswick to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, FREDERICTON, N.B., 23rd January, 1894.

SIR,—I have the honour to submit herewith, a copy of an Act passed by the legislative assembly at its last session, intituled "An Act to amend an Act respecting the use of Tobacco by Minors." This Act was reserved by me upon a report of the hon. the Attorney-General, that my assent should be reserved, until the Act had been submitted for the consideration of his Excellency the Governor General in Council.

Accompanying this is a copy of the report made to me by the Attorney-General, upon which I reserved the Act.

I have, etc.,

JNO. JAMES FRASER,  
*Lieutenant-Governor.*

*Memorandum of Hon. Attorney-General Blair on reserved bill, entitled "An Act to amend an Act respecting the use of Tobacco by Minors."*

Memorandum of the Attorney-General for the information of his Honour the Lieutenant-Governor relating to a bill to amend *An Act respecting the use of Tobacco by Minors*, passed by the legislative assembly of New Brunswick at the present session thereof, 1894.

A bill "An Act to amend an Act respecting the use of tobacco by minors," a copy whereof is herewith inclosed to your honour, has been passed during the present session, and as I entertain some doubt as to the competency of the legislature to pass this bill, I would advise that your honour's assent be reserved, until the same be submitted for the consideration of His Excellency the Governor General in Council.

The doubt which arises in my mind is as to whether the legislature is not, in passing the bill attempting to make the sale of tobacco to minors a crime, and I am unable at the moment to satisfy myself that if such is the case, the power to do so, is sufficiently conferred upon the local legislature by the British North America Act.

Several Acts I am aware have been passed within recent years, not only in this province but in other provinces, respecting the use of tobacco by minors, imposing penalties recoverable by summary conviction upon persons selling or furnishing tobacco or cigars to such minors, and it has, as I understand, been claimed by some that these Acts are competent, as being in exercise of the power to protect the public health and morals.

My difficulty in accepting this view, without further consideration than I am able at this moment to give it, is, that there would be no limit to the extent the legislature might not go in this direction, if it may single out tobacco as an article which shall not be sold to or used by any persons the legislature may designate, except upon being subject to the penalties which may be in the enactment prescribed.

It would seem to me, therefore, to be advisable to call the attention of the Minister of Justice to this question, before giving your honour's assent to the bill, and I therefore respectfully recommend that the assent be reserved for that purpose.

ANDREW G. BLAIR,  
*Attorney-General.*

April 21st, 1894.



*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council, on the 25th March, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th March, 1895.

*To His Excellency the Governor General in Council :*

A bill has been referred to the undersigned which was passed in the session of 1894 by the Legislative Assembly of the province of New Brunswick, intituled "An Act to amend an Act respecting the use of tobacco by minors," which bill was reserved by his honour the Lieutenant-Governor for the signification of your Excellency's pleasure thereon. Accompanying the bill is a copy of the report made to his Honour the Lieutenant-Governor by the Attorney-General of the province, setting forth the reasons upon which the Lieutenant-Governor was pleased to reserve the bill.

The undersigned observes that the bill is intended to amend an Act of the provincial legislature respecting the use of tobacco by minors, passed in the year 1893 (56 Vic., cap. 36).

This Act, although it escaped comment, appears to have been left to its operation upon the recommendation of the late Minister of Justice, not because the Act was considered as free from objection, but because a certain policy seems to have been established by the course hitherto followed, with regard to provincial Acts of doubtful validity, as relating to the subject of criminal law. Cases frequently arise in which it is difficult to draw the line between that which is *ultra vires* of a provincial legislature, as appertaining to *criminal law* within the meaning of that expression in section 91 of the British North America Act, and that which is *intra vires* of the legislature by reason of its authority under section 92 in "the imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section." Statutes presenting this difficulty have, therefore, in numerous cases been left to their operation, with a comment calling attention to the doubt, and stating in effect that it would be convenient to leave the Acts to their operation, and the question of their validity to the courts at the instance of any individual who might claim to be prejudiced thereby.

The Act of 1893 provides, in effect, that any one who furnishes tobacco to a minor under 18 years of age shall, upon summary conviction, be liable to a penalty or to imprisonment with or without hard labour, in the discretion of the committing justice, and the reserved bill provides that :

"Any person who shall knowingly accept any money or other valuable consideration to act as the agent of any person under eighteen years of age, in procuring for such person any cigars, cigarettes, smoking or chewing tobacco, or snuff, or any form or preparation of tobacco or opium for smoking, or knowingly shall supply to any person under eighteen years of age, any such cigars, cigarettes or other form or preparation of tobacco, or opium for smoking or chewing, on the promise of any money or other valuable consideration, shall on summary conviction thereof, be liable to a fine of not less than \$2.00 nor more than \$10.00, with or without costs of prosecution, or to imprisonment, with or without hard labour, for any time not exceeding thirty days, or to both fine, with or without costs, and imprisonment to the said amount and for the said term, in the discretion of the committing justice.

"Any person under eighteen years of age who has in his possession, cigarettes, cigars or tobacco in any form, and upon request of any police officer, constable or justice of the peace, refuses to inform such police officer, constable or justice, from whom he obtained the same shall, upon summary conviction thereof, be subject to a penalty of not less than \$1.00 nor more than \$10.00, with or without costs of prosecution."

In the opinion of the undersigned, it is doubtful whether either the reserved bill or the Act falls within the legislative authority of the province. Provisions of the character in question would appear to come rather within the competence of Parliament, as relating to the subject of criminal law.

The undersigned, nevertheless, having regard to the policy referred to, and to the fact that the object of the bill is salutary, would not, had it received assent, have recommended its disallowance. The inconveniences which might result if the Governor General is to be called upon to give effect to provincial legislation of this character are, however, of a nature sufficiently serious to justify your Excellency in withholding assent, but if the provisions of this bill should be hereafter enacted by the provincial legislature, your Excellency would probably see no reason for adopting a different course from that which has been hitherto generally followed with regard to similar legislation open to the same objection.

The undersigned, therefore, recommends that no action be taken upon the bill in question, and that a copy of this report, if approved, be transmitted to his honour the Lieutenant-Governor for his information.

The undersigned further recommends that the attention of his Honour be called to a minute of his Excellency the Governor General in Council of 20th November, 1882, stating the constitutional principles which should govern the action of a Lieutenant-Governor in the exercise of his authority as to the reservation of bills.

Respectfully yours,

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 10th January, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th November, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of New Brunswick, in the fifty-seventh year of Her Majesty's reign (1895), chapters 1 to 78, 80 to 87; received by the Secretary of State for Canada on the 5th day of July, 1894: and he is of opinion that they are unobjectionable and may be left to their operation.

Chapter 79 has been reserved for a special report.

The undersigned also recommends that a copy of this report, if approved, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor of the province, for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by his Excellency the Governor General in Council, on the 10th of January, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th December, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon chapter 79 of the statutes of the province of New Brunswick, passed in the fifty-seventh year of Her Majesty's reign (1894), intituled :—

“An Act to continue the Saint John River Log Driving Company, and for the consolidation and amendment of the Acts relating thereto,” received by the Secretary of State for Canada on the 5th day of July, 1894, as follows :—

This statute authorizes the company, among other things, to drive logs and timber down the St. John and Aroostook Rivers, and for that purpose to use all such necessary booms and piers as may be approved by the Lieutenant-Governor in Council, and to remove from the beds of such river, stones, rocks and other obstructions to the free running of the water and the driving of logs, and to improve the rivers as highways for the driving of logs, timber and lumber.

It has been pointed out upon several occasions by the late Minister of Justice, when reporting upon legislation of a similar character, that rivers having been by "The British North America Act" assigned to the Dominion, it is not within the power of a provincial legislature to grant any authority or rights with respect to them. In this statement the undersigned concurs. This statute is, therefore, open to objection, in so far as it is intended to apply to rivers so assigned to Canada. The question of law, which is involved in the objection, however, having been referred for determination to the Supreme Court of Canada by your Excellency in Council, the undersigned does not, at present, consider it necessary to do more than call attention to the matter. Pending the decision of the reference, the courts would afford a remedy to any person who might be affected by the acts of the company.

In so far as the powers of the company would authorize it to interfere with or affect the navigation of the rivers mentioned, they are, of course, *ultra vires* of the provincial legislature.

The undersigned recommends that the Act be left to its operation, and that a copy of this report, if approved, be sent to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,

*Minister of Justice.*



## NEW BRUNSWICK, 58TH VICTORIA, 1895.

3RD SESSION—28TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th October, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th October, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of New Brunswick in the fifty-eighth year of Her Majesty's reign (1895), chapters 1 to 11, 13 to 19, 21 to 66, 68, 70 to 81, 83 to 85, 87 and 88, received by the Secretary of State for Canada on the 11th day of May, 1895; and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts, Chapters 12, 20, 67, 69, 82 and 86, are the subject of a separate report.

The undersigned recommends that if this report be approved a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant Governor of the province, for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th October, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th October, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report upon the following statutes of the province of New Brunswick passed in the fifty-eighth year of Her Majesty's reign (1895), which were assented on the 5th day of March, 1895, and received by the Secretary of State on the 11th day of May, 1895;

Chapter 12.—“An Act in amendment of an Act respecting Law Stamps.”

This chapter provides that the fees which have heretofore been collected by the Clerk of the Crown for his own use, shall hereafter be paid by law stamps to the Receiver General, according to the provisions of an Act of the provincial legislature respecting law stamps, passed in the forty-seventh year of Her Majesty's reign, and the Acts in amendment thereof. It also provides that the Receiver General shall pay the Clerk of the Crown the sum of \$300.00 annually in lieu of the fees formerly received by him as Clerk of the Crown. A schedule of the fees to be paid by means of such stamps is established by the Act.

Chapter 20.—“An Act to amend chapter 52 of the Consolidated Statutes, ‘Courts of Probate.’”

This chapter provides among other things that the judges' and registrars' fees shall be paid according to a schedule annexed to the act, and that such fees shall be paid by means of stamps affixed to the respective documents mentioned in the schedule; that the fees so collected shall form a fund called “The Probate Fee Fund,” which shall be held and applied by the Provincial Secretary of the province for the purpose of paying the salaries of the judges and registrars as specified in the act, and for defraying the judges' expenses incident to the carrying out of the provisions of the act.

Their lordships of the Judicial Committee in the case of the Attorney General for Quebec against Reed, 10 Appeal Cases, page 141, decided that a tax levied by means of

stamp duty upon exhibits filed in court could not be called direct taxation within the meaning of section 92 of "The British North America Act." They refrained, however, from deciding whether, if a special fund were created by a provincial Act, for the maintenance of the administration of justice in the provincial courts, raised for that purpose, appropriated to that purpose, and not available as general revenue for general provincial purposes, the limitation to direct taxation would still have been applicable. In this respect the statutes under consideration may be distinguishable in principle from that which was held *ultra vires* in the case referred to, and although the question as to the validity of these statutes is open to doubt, yet in view of the importance of the subject to the province, and the fact that previous legislation of a similar character has been allowed to go into operation, the undersigned is of opinion that no duty devolves upon your Excellency in the present case, beyond directing the attention of the provincial government to the question thus raised.

Chapter 67.—"An Act to incorporate the Riverside Cemetery Company."

By section 11 it is enacted that any person who shall wilfully destroy, mutilate, injure or remove any tomb, monument, vault, grave-stone, or other structure placed in the cemetery, or any fence, or other description of property therein mentioned, shall be guilty of an offence punishable on summary conviction and be liable therefor to fine or imprisonment.

Chapter 82.—"An Act to incorporate the Baker Brook Mill and Boom Company."

Section 9 contains a somewhat similar provision rendering any person or persons liable to fine or imprisonment who shall wilfully destroy, injure or damage the company's dam or piers.

These provisions would appear to be *ultra vires*, as affecting the subject of criminal law, and as imposing penalties for offences which have already been established under Dominion statutes. Enactments of similar effect have, however, been previously left to their operation, and the question of validity is one which may be conveniently determined by the courts at the suit of any individual who may be affected.

Chapter 69.—"An Act to incorporate the Grand Falls Power and Boom Company (Limited.)"

It is provided by section 4 that the company may, for the purpose of utilizing the water powers of the River St. John, construct, operate and maintain a canal and hydraulic raceway from a point on the river above Grand Falls, to a point upon the lower basin below Grand Falls, and may also build at the head of Grand Falls and in the narrows between the upper and lower basin, wing-dams, sluices, conduits and buildings, as may be necessary for utilizing the water power of the river for the purpose of the company's business. The company is also authorized to construct and maintain side-booms, wharfs and piers along the upper basin above Grand Falls and to erect other works in the St. John River.

Chapter 86.—"An Act to incorporate the Tobique River Log Driving Company."

By section 2 it is enacted that the company shall have the right to drive logs and timber down the Tobique River, and for the purpose of holding lumber, make such improvements, and construct such works and do anything that may be required upon the river, subject to the approval of the Lieutenant-Governor in Council.

The undersigned and his predecessor have in previous reports upon provincial legislation frequently stated the objections which, from a Dominion point of view, exists to legislation of this character.

The question of right involved in such objections is now awaiting determination in the courts, and it appears to the undersigned therefore, that, pending such decision, it would not be prudent to interfere with these enactments.

The undersigned therefore recommends that the statutes mentioned in this report, if approved, be transmitted to the Lieutenant-Governor, for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,

*Minister of Justice.*

## MANITOBA—34TH VICTORIA, 1871.

## 1ST SESSION—1ST PARLIAMENT.

*Lieutenant-Governor Archibald to the Secretary of State for the Provinces.*

GOVERNMENT HOUSE, SILVER HEIGHTS.

SIR,—I have the honour to acknowledge the receipt of a telegraphic despatch from you dated Ottawa and St. Paul, the 14th June, 1871, inclosed to me by Mr. Kitson, of which I forward you a copy.

The word "statements" in the despatch, I presume, was meant for "statutes."

I have so read it, and have forwarded you a reply, of which also, I inclose a copy.

Agreeably to the promise in my telegram, I send you by this mail six copies of the Supreme Court Act, and by next mail shall send you further Acts up to page 50, or thereabouts.

I have been pressing actively the publication of the laws ever since the House rose. If I had any notion that the delay would have been so great, I should have had a manuscript copy of the whole made and forwarded to you.

When the printing is complete, I shall transmit the whole in sheets.

The four statutes I have reserved are :

1st. One which I have had passed to carry out the pledge made by this government to the government of Canada, in reference to North-western Telegraph Company, who were promised certain powers within the province.

It seems to me that this being a line to connect with a line in a foreign territory, the jurisdiction was with the Dominion Parliament.

2nd. A bill to authorize the construction of a bridge over Red River. This is a navigable water, and no interruption ought to be offered to the navigation, and the bill was objectionable on that ground, to say nothing of the subject of navigation falling within the province of the Parliament at Ottawa.

3rd and 4th were railway bills. One to incorporate a company to build from Fort Garry to Pembina, another from the Portage to St. Joseph, parallel with the former.

The language of the bills for railway and telegraph confines them to British territory, but they are really intended to connect with the foreign lines, and, not caring to stop the bills, I have reserved them for the consideration of his Excellency the Governor General, so as that you may settle the question of jurisdiction.

I have, &c.,

ADAMS G. ARCHIBALD,  
*Lieutenant-Governor.*



*Lieutenant-Governor Archibald to the Secretary of State for the Provinces.*

GOVERNMENT HOUSE, SILVER HEIGHTS, 14th July, 1871.

SIR,—Adverting to my despatch No. 208, of this date, I have now the honour to inclose you manuscript copies of bills forming chapters 44, 45, 46 and 47, passed by the two houses of the legislature of Manitoba at its recent session, and which I have already informed you I reserved for the signification of the pleasure of his Excellency the Governor General.

Chapter 45 is intituled : “An Act to authorize the construction of a Telegraph line within this province.”

This Act was passed in consequence of the correspondence between you and myself on the subject of the North-western Telegraph Company's agreement to construct a telegraph line to Fort Garry.

In your despatch No. 426, under date of the 13th September last, you inclosed me a copy of the articles of agreement; the fourth clause of which imposed upon the Governor General the obligation of procuring from the government of Manitoba the right of property required by the proposed telegraph line. I communicated to you in my despatch, No. 11, the action of my government on this matter, inclosing copy of the minute of council passed therein.

I had expected that some action would have been taken by the company to declare and ask for the rights of the property they required.

No such application being made, I caused to be introduced and carried the Act now inclosed.

Still, I felt that we were probably exceeding the jurisdiction conferred upon us by the Union Act, and, therefore, while passing the Act to redeem our pledge, I reserve it for his Excellency the Governor General to act upon it, as the Minister of Justice should advise.

The line in question is, under the articles of agreement which gave rise to the Legislation, a line between the Dominion and a foreign country, and, as such, the Legislation would seem to appertain to the Dominion.

Bills Nos. 44 and 46 provide for the construction of railways in this province, one in a general term, from any point or points in Manitoba; the other, from Lake Manitoba to the boundary line, near St. Joseph.

The intention of the first Act was to cover the ground between Fort Garry and Pembina. Of the second, to cover a parallel line commencing at or near the Portage, each line to communicate with the railway system of the United States.

They were, therefore, liable to the same objection as the telegraph bill, while one of them was open to still another. Assuming the jurisdiction of the legislature to be sufficient, it did not seem to me as a question of discretion to be wise to allow any company, organized under the general wording of the first Act, to embarrass or thwart any operations that might be undertaken on the interoceanic railway, under the provisions of an Act of the Dominion.

Bill No. 47 authorizes the construction of a bridge across Red River.

This river is navigable at certain seasons for 400 miles above this, and at all times for a considerable distance above and below the point indicated as a site for the bridge.

Without entering into the question of jurisdiction, it did not seem to me desirable to give authority to make any obstruction to the navigation of the river.

This bill not only makes no provision for the passing of ships, but exposes to heavy penalties any interference with what, as an obstruction to a public highway, would at common law be liable to abatement as a nuisance.

The intention, I understand, was to construct the bridge with the boats moored in the river, the spaces between the boats being connected by a timber flooring.

I have, &c.,

ADAMS G. ARCHIBALD,  
*Lieutenant-Governor.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th October, 1871.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th October, 1871.

The undersigned to whom was referred certified copies of the Acts passed by the legislature of the province of Manitoba in the first session of the first parliament thereof, held in the 34th year of Her Majesty's reign, has the honour to report :—

That he has carefully examined the same, and is of opinion that the legislation thereby affected is within the jurisdiction of the legislature of Manitoba, except as regards certain power conferred upon a police magistrate by the second section of chapter 9, "An Act authorizing the appointment of Magistrates and Coroners."

This section provides that a police magistrate "shall have all powers possessed by one, two or more justices of the peace."

Now, it is obvious that if an Act of the Dominion Parliament relating to criminal law, provided for the trial of an offender before two justices of the peace, no provincial legislature has the power of amending such provision, by giving any one person, although a judge or stipendiary, or police magistrate, the powers conferred by the Dominion Act on two justices.

It is suggested that the Act in question should be amended at the next session of the legislature by substituting the following words for those above quoted, viz., "in addition to all the powers possessed by any one justice of the peace, shall also have all the powers conferred by any statute of this province upon two or more justices of the peace."

The undersigned, therefore, recommends that all the Acts, with the exception of chapter 9, be left to their operation, and that the latter be reserved for further report, when the legislature shall have had an opportunity of amending the same as suggested.

All of which is respectfully submitted.

JOHN A. MACDONALD,

*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th of November, 1871.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th November, 1871.

The undersigned, to whom was referred the despatch of the Lieutenant-Governor of Manitoba, dated the 14th July last, inclosing copies of four bills passed by the legislature of Manitoba, but reserved by him for the signification of the pleasure of his Excellency the Governor General, has the honour to report as follows :—

Chapter 44.—The bill, chap. 44, intituled: "An Act to empower the Lieutenant-Governor in Council to authorize the construction of Railways in this Province," empowers the Lieutenant-Governor in Council to authorize, by order in council, "the construction, by any efficient company, of a line or lines of railway from any point or points within the province, to any other point or points within it, and, for that purpose, to give such company power to enter upon any lands required for such construction, and for all work in connection therewith, and to lay a line or lines of railway thereon, and generally to do any act or thing which may be necessary in constructing and maintaining such line or lines of railway."

This Act seems to be contrary to the first principles of legislation. By it the Lieutenant-Governor in council has the power to give to any association of individuals, the right to build railways anywhere in this province, and to take possession of any lands whether belonging to the Crown or to individuals, no sufficient provision being made for compensation for any infringement of the rights of property or other vested rights.



As the government of Canada is pledged to construct a line of railway connecting the Atlantic and Pacific, and as such railway will pass through the province of Manitoba, it is obvious that this Act, if put in force, might put it in the power of any company authorized to build railways, to thwart or greatly impede any operations which might be undertaken for the construction of such inter-oceanic railway.

The Act is so objectionable in every respect that the undersigned respectfully recommends that : is Excellency's assent be not given to it.

Chapter 45.—The bill, chapter 45, intituled : "An Act to authorize the construction of a Telegraph Line in this Province" empowers the Lieutenant-Governor "to authorize, by Order in Council, the North-western Telegraph Company or other efficient company, to construct a line or lines of telegraph from any one or more points within the province, to any other point within it, and for that purpose to give such company power to enter upon any lands required for such construction, for the erection of posts or other work in connection therewith, and to erect posts thereon and to attach wires thereto, and generally to do any act or thing which may be necessary in erecting or constructing and maintaining such telegraph line."

The North-western Telegraph Company mentioned in this clause, the undersigned understands to be an incorporated company existing in the United States, which desires to extend its line across the boundary to the town of Winnipeg. If such be the case, the Act should more properly be passed by the Parliament of the Dominion.

The Act, however, is objectionable for the reasons given with respect to the one previously mentioned, and the undersigned recommends that His Excellency's assent be not given to it. There will be no difficulty in obtaining an Act of the Canadian Parliament authorizing the extension of the line of telegraph from the frontier to Winnipeg, under the agreement entered into between the Canadian government and the North-Western Company, to which reference is made by the Lieutenant-Governor in his despatch.

Chapter 46.—The bill, chapter 46, intituled : "An Act to incorporate The Western Railway of Manitoba," authorizes such company to construct a railway "from a point at or near Lake Manitoba, in the province of Manitoba, to a point within the province in proximity to St. Joseph, in the state of Dakota, in the United States; and to construct branch lines from the said main line to other points within the said province."

As this Act might interfere with the line of the inter-oceanic railway to be built by the government of the Dominion, the undersigned has the honour to recommend that his Excellency's assent be withheld from it for the present, until the line of such inter-oceanic railway be settled by the Dominion Parliament.

Chapter 47.—The bill, chapter 47, intituled : "An Act to incorporate the 'Red River Bridge Company' of Manitoba, and to authorize the construction of a Bridge across the Red River at a point opposite or near Fort Garry, and to levy tolls on said Bridge," is objectionable, inasmuch as the proposed bridge would interfere with and obstruct the navigation of the said river, a stream which, as the Lieutenant-Governor mentions in his despatch, is navigable at certain seasons for 400 miles above the town of Winnipeg.

The construction of a bridge across a river of such size and importance is, in the highest degree, inexpedient, and the undersigned, therefore, recommends that his Excellency's assent be withheld from such Act.

All which is respectfully submitted.

JOHN A. MACDONALD,  
*Minister of Justice.*



## MANITOBA 35TH VICTORIA, 1872.

2ND SESSION—1ST PARLIAMENT.

*Lieutenant-Governor Archibald to the Secretary of State for the Provinces.*

GOVERNMENT HOUSE, FORT GARRY, 14th April, 1871.

SIR,—I have been waiting till the bills, reserved by me at the close of last session for the signification of the pleasure of his Excellency the Governor General, should be printed, before making a report of the grounds upon which I thought fit to reserve them.

They are now in print, and I have the honour to forward to you two copies of the bills, with some observations upon them, for the information of the Minister of Justice.

1. "A Bill to incorporate the Manitoba Central Railway Company."

The subject with which this bill deals would more appropriately come within the jurisdiction of Parliament. Not only so, but the bill is wretchedly drawn. By the second clause, it incorporates, as part of it, several sections of some Railway Act, which it does not specify. If it means to refer to the Dominion Act, it embodies, as part of our legislation, a code much of which touches matters not only beyond our jurisdiction, but totally inapplicable to a private company, inasmuch as the clauses incorporated provide for the construction of the Intercolonial Railway. If this be not the Act intended to be embodied, it must mean the Railway Act of some other province, for we have no Act of the kind. Under these circumstances, the Act would be useless, and, besides, a discredit to our statute-book; and on these grounds I thought it best to reserve it.

2. "An Act to incorporate the Assiniboine and Red River Navigation Company."

It seems to me this Act trenches upon the ground reserved for Parliament. We certainly have the power of incorporating companies for local objects; but I take it these objects must be such as the local legislature has the right to deal with. Now, this bill, meditating to deal with navigation and shipping, seems to me to be at variance with the 10th subsection of the 91st clause of the Union Act; but, if the subject be within the jurisdiction of the local legislature, I do not see any objection to the bill in point of expediency.

3. "An Act to constitute and incorporate the Law Society of Manitoba."

This bill, even if the policy were sound, under any circumstances, seemed to me premature. In a country like this, obstacles should not be thrown in the way of any person in good standing at the bar of any other province, to be admitted to the practice of the law here. If the provisions of the Union Act, which confine the selection of judges in any province to the bar of that province, should be, as I think they are, applicable to Manitoba, it would not be desirable so to force the admission here, as to restrict the government at Ottawa, in their selection of judges to such persons as the existing members of the bar here might think fit to admit.

But another important objection is the power given under this bill to the bar to regulate their own fees. Whether that is desirable, in any stage of the history of the bar of a country, there can be no doubt that it would be a most dangerous power to extend to the bar of this province in its present condition.

4. "An Act respecting Land Surveyors."

This is objectionable on the same grounds. It creates a monopoly where we are better, I think, without it. We need for the work of this country not only first-class surveyors, who could undergo the examination prescribed by this Act, but also men moderately acquainted with the principles of surveying. There are at this moment in the province several persons who have been engaged more or less all their lives in rough surveys, who can run a line with the compass, and in whose judgment their neighbours

have confidence, and yet who could not pass such an examination as the bill contemplates, and would be subject to penalties if they acted as surveyors if the bill comes into operation. I see no reason why this class of men should not be allowed to continue their services, or why others who may come here similarly qualified should not be permitted to do the kind of rough work which a new country requires.

I have, &c.,

ADAMS G. ARCHIBALD,

*Lieutenant-Governor.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor-General in Council on the 30th December, 1872.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th September, 1872.

The undersigned has the honour to report that he has had under consideration four Acts passed by the legislature of the province of Manitoba, at its last session, which were reserved for the signification of the pleasure of his Excellency the Governor-General, and transmitted by a despatch from his Honour the Lieutenant-Governor of Manitoba, bearing date the 14th April, 1872. They are as follows:—

1. "An Act to incorporate the Manitoba Central Railway Company."

This Act appears to be within the competence of the provincial legislature. A portion of the line, however, proposed to be constructed by this Act, will extend across the country, through which the Pacific Railway to be constructed from Canada to British Columbia, must pass. It would therefore seem wise to postpone granting an Act of incorporation to a company which may rival, prejudice, or obstruct the more important line.

The Act is besides, liable to the objection taken by the Lieutenant-Governor in his despatch. He says:

"By the second clause it incorporates, as part of it, several sections of some Railway Act, which it does not specify. If it means to refer to the Dominion Act, it embodies, as part of our legislation, a code much of which touches matters, not only beyond our jurisdiction, but totally inapplicable to a private company, inasmuch as the clauses incorporated provide for the construction of the Intercolonial Railway.

"If this be not the Act intended to be embodied, it must mean the Railway Act of some other province, for we have no Act of the kind. Under these circumstances the Act would be useless, and, besides, a discredit to our statute book."

Under these circumstances the undersigned recommends that his Excellency do not give his assent to the measure.

2. "An Act to incorporate the Assiniboine and Red River Navigation Company."

With respect to this bill the Lieutenant-Governor in his despatch says:—

"It seems to me this Act trenches upon the ground reserved for Parliament. We certainly have the power of incorporating companies for local objects, but I take it those objects must be such as the local legislature has the right to deal with. Now, this bill meditating to deal with navigation and shipping, seems to me to be at variance with the 10th subsection of the 91st clause of the Union Act."

With great respect for the opinion of the Lieutenant-Governor, the undersigned is of opinion that the Act is within the competence of the local legislature. It is, however, objectionable, inasmuch as in its second clause it provides that the shareholders of the company shall be, to all intents, partners in the same.

This provision is contrary to the first principles which govern the corporation of companies; that such corporations are distinct entities in themselves. The making of the shareholders partners in the company, to all intents, renders them liable to sue and be sued in their individual capacity.

The clause goes on to say that the shareholders shall not be liable beyond the amount of their respective shares in the company.

It is apprehended that under this clause, a creditor might bring an action against the corporation, and proceed to judgment and execution against the property of such corporation, and also the shareholders as individuals, and recover against them individually to the extent of the amount of their respective shares.

This, it is presumed, is not the intention or desire of the shareholders.

If the promoters of this bill desire to do business on the Red River beyond the bounds of Manitoba, or within the United States, the Act of incorporation should be obtained from the Dominion Parliament. Under these circumstances the undersigned recommends that his Excellency do not give his assent to this bill.

3. "An Act to constitute and incorporate the Law Society of Manitoba."

With respect to this Act the Lieutenant-Governor in his despatch says:—

"This bill even if the policy were sound, under any circumstances, seemed to me premature. In a country like this obstacles should not be thrown in the way of any person of good standing at the bar of any other province, to be admitted to the practice of the law here. If the provisions of the Union Act, which confine the selection of judges in any province, to the bar of that province, should be, as I think they are, applicable to Manitoba, it would not be desirable so to fence the admission here as to restrict the government at Ottawa in their selection of judges, to such persons as the existing members of the bar here might think fit to admit. But another important objection is the power given, under this bill, to the bar to regulate their own fees. Whether that is desirable, in any stage of the history of the bar of a country, there can be no doubt that it would be a most dangerous power to extend to the bar of this province in its present condition."

The grounds taken by his Honour against sanctioning this bill are so strong that the undersigned begs leave to recommend that the assent of the Governor General be not given to it.

4. "An Act respecting Land Surveyors."

The Lieutenant-Governor in his despatch says, with regard to this Act:—

"This is objectionable on the same grounds. It creates a monopoly where we are better, I think, without it. We need for the work of this country, not only first-class surveyors, who could undergo the examination prescribed by this Act, but also men moderately acquainted with the principles of surveying.

"There are at this moment in the province several persons who have been engaged more or less all their lives in rough surveys, who can run a line with the compass, and in whose judgment their neighbours have confidence, and yet who could not pass such an examination as the bill contemplates, and would be subject to penalties if they acted as surveyors after the bill comes into operation.

"I see no reason why this class of men should not be allowed to continue their services, or why others, who come here, similarly qualified, should not be permitted to do the kind of rough work which a new country requires."

There is great force in what his Honour says, and it appears to the undersigned, that in the infant state of the province of Manitoba, it would have been well if the legislature had encouraged competent surveyors from all the provinces, to become settlers there, by giving them a legal status, on the production of the necessary certificate from their several provinces.

This, however, is for the consideration of the provincial legislature.

On the whole, the undersigned recommends that the view taken by the Lieutenant-Governor in his despatch be concurred in, and that the Governor General's assent be not given to the bill in question.

All which is respectfully submitted.

JOHN A. MACDONALD,

*Minister of Justice.*



*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor-General in Council on the 16th April, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th April, 1873.

The undersigned to whom was referred a certified copy of the statutes of Manitoba, passed in the session held in the thirty-fifth year of Her Majesty's reign, has the honour to report as follows:—

That the Act, chapter 3, intituled: "An Act to amend an Act to establish a Supreme Court in the province of Manitoba," provides, in its 5th section, that no chief justice or puisne judge of the Supreme Court shall be appointed, unless such person is able to speak both the English and French languages.

This provision, in the opinion of the undersigned, is *ultra vires*, as by reference to the "British North America Act, 1867," clause 97, it will be found that the only limit upon the discretion of the Governor-General, in selecting such judges for the several provinces, is, that they shall be from the bars of the provinces respectively.

It would appear, therefore, that this provision is ineffectual, as being beyond the jurisdiction of the legislature of Manitoba.

That the Act (chap. 6) intituled: "An Act for the Registration of Voters," provides in effect in its 21st and 22nd clauses, that any judge refusing or neglecting to perform any duty imposed upon him by the Act shall be liable to a fine.

This, in the opinion of the undersigned, is objectionable, as it would seem to be inconsistent with the dignity of a judge of a Superior Court that a pecuniary penalty should be imposed upon him for neglect of duty.

By the "British North America Act, 1867," clause 99, judges of the superior courts hold office during good behaviour, but are removable by the Governor General, on address of the Senate and House of Commons. This clause provides fully the manner in which judges can be called to account for neglect of duty, and, in the opinion of the undersigned, their position should not be otherwise affected by legislation such as is contained in the Act under consideration.

The undersigned does not, under the circumstances, recommend your Excellency to disallow the two Acts above quoted, but would respectfully recommend that the attention of the government of Manitoba be called to them, with a view to their amendment.

The government of Manitoba should also, in the opinion of the undersigned, be given to understand that his Excellency the Governor General does not consent to the limitation of his power of selection of judges contained in the Act (chapter 3), and will not feel bound by it in any appointments to the bench.

He has, therefore, the honour to recommend that all Acts passed by the legislature of Manitoba, in the session held in the 35th year of her Majesty's reign, be left to their operation.

All of which is respectfully submitted.

JOHN A. MACDONALD.

*Minister of Justice.*

TO COUNCIL—NOTE BY HIS EXCELLENCY.

SUBJECT:—*Manitoba Supreme Court.*

I conclude that the recommendation to be conveyed to the Lieutenant-Governor is a sufficient security for the amendment of these Acts.

(Signed)

D.

16th April, 1873.

## MANITOBA, 36TH VICTORIA, 1873.

3RD SESSION, 1ST PARLIAMENT.

*Lieutenant-Governor Morris to the Secretary of State for the Provinces.*

GOVERNMENT HOUSE, FORT GARRY, 15th March, 1873.

SIR,—I have the honour to inform you that I reserved for signification of the pleasure of his Excellency the Governor General the following bills:—

## 1. "An Act respecting the Study and Practice of the Law."

A similar bill was passed last year and reserved by my predecessor, who was of opinion that no obstacles, in a new country, should be placed in the way of any person of good standing in any of the other provinces being admitted to the practice of the law. I regret to say that the bill, which was understood to have been framed by certain barristers here, was, as introduced in the House, of a character to show that the persons proposing to be incorporated, wished to secure a practical monopoly of the practice of the profession for a period of two years, as the bill provided that no barrister from the other provinces could be received here, until after service for two years in the office of a barrister in the province, and this, although some of the persons to be incorporated had been made barristers by the Executive Council, having previously been Attorneys at other bars. The assembly very properly struck out these clauses. The Act as it stands nominates fifteen benchers, several of whom are not in practice, and others are of only a couple of years' standing at the bar and even less, and makes the benchers a close body, vacancies being supplied by election of the benchers, while in Ontario the system in question has been abandoned. The law now in the statute-book provides for the admission of barristers or attorneys by the Lieutenant-Governor in Council.

With regard to this Act, it is simply a question whether the province be sufficiently advanced, and whether there is a bar here of sufficiently stable and settled a character, to justify the placing the control of admission to the bar in the hands of the few practitioners who are resident here, and I therefore submit the Act for the consideration of the Governor General.

## 2. "An Act relating to the Prairie Fires."

I reserved this Act because there are two clauses in it which are of a novel character, and are, I believe contrary to sound principles, and likely to prove injurious to the interests of the Dominion.

These clauses make surveyors, railway companies and contractors liable for the result of fires caused by any of their men, irrespective of the facts whether there was negligence, or whether the men were at the time under the control of the employers, provisions which I would fear would seriously interfere with the survey of the public lands.

The Act itself is a useful one, but I must recommend that it be not assented to, in which event a similar Act, omitting the objectionable clauses, can be passed next session.

## 3. "An Act to impose a Tax on Wild Lands."

I reserved this bill, as I observed that a similar Act had been reserved in British Columbia. I think, however, that the Act is a proper one.

Large tracts of land in good sections of the province have been purchased by speculators from abroad.

These lands will be unproductive, interfering with the progress of settlement, while the proprietors of them will share in the enhanced value of these lands, caused by the enterprise of the residents here, without contributing in any way to the advancement of the province; and as the means at the disposal of the legislature here are limited, I



think the ministry were right in proposing the Act, and I therefore recommend that it be sanctioned without delay.

4. "An Act respecting Aliens."

This is an Act copied from the English Act of 1870. Heretofore the titles to land in this province have been long leases, but as henceforth titles to the soil will emanate from the Crown, and there are a few enterprising aliens resident in the province, I think the legislation necessary. I reserved the bill, as at first I entertained some doubts as to the power of the legislature to deal with the subject.

Under the British North America Act the legislation with aliens is entrusted to the Dominion parliament, while property and civil rights are under the control of the provincial legislature.

I have come to the conclusion that, as the Act deals only with the holding of property by aliens, and declares the existing disqualification from serving as jurors, a question which has already arisen, and was added by the then chief justice under the English laws in force here as now enacted, it is within the powers of the legislature, and I therefore recommend that it be sanctioned forthwith.

5. "The Half-Breed Land Grant Protection Act."

The subject of these grants attracts a good deal of attention, and a movement was on foot to obtain legislation to prevent such of these lands as fell to the heads of families from being sold by them, in order that the lands might descend to the children.

This project was abandoned, and the present bill was introduced and passed.

It seems that speculators have bought largely from half-breeds their claims to allotments at low prices, ranging as low in some cases as \$15, the maximum being \$50. These sales, of course, only give the vendees a right of action, to enforce the contract, when the vendor should become entitled to his land. The object of the bill is to cancel all these sales, and give the vendee an action to recover back the price, which, if in goods, was to be charged at ordinary prices.

The consideration is made a lien on the land, which may be sold for the recovery of the price paid.

The objections to the bill, the intention of which is, no doubt, good, are these:

1st. It is retroactive—dealing with existing contracts and cancelling them.

2nd. It opens a fruitful door for litigation—the prices charged for goods being opened up for examination in each case, where those formed part of the consideration.

3rd. There is no machinery provided for carrying out the sale of the land on which the lien is established, but this, of course, could be remedied next session.

I have no sympathy with those who may have purchased these claims to land at inconsiderable prices, or in an unfair manner, but as the law is novel and retroactive in its character, I feel compelled to reserve it for the signification of the pleasure of the Governor General; though it must be borne in mind also that, if the Act be sanctioned, it may be taken as a precedent for other restrictions with regard to the holding of these lands.

6. "An Act to incorporate the Eastern Railway Company of Manitoba."

This railway is within the bounds of the province, and is designed to carry wood and stone, I understand. I reserved it, as I found similar bills had been disallowed last year, on the ground of possible interference with the line of the Pacific railway. There is an objectionable clause in the bill making the shareholders partners, though limiting the liability to the amount of their shares; as this clause is very obscure, it should be understood that it should be amended, if it be sanctioned.

If it is found that the Act does not interfere with the proposed Pacific Railway or its line, which I am led to believe it does not, I would recommend that it be sanctioned.

I have, &c.,

ALEX. MORRIS,  
*Lieutenant-Governor.*



*Lieutenant-Governor Morris to the Secretary of State of Canada.*

GOVERNMENT HOUSE, FORT GARRY, 29th November, 1873.

SIR,—Referring to my despatch of the 15th of March last, inclosing certified copies of reserved Acts of the third session of the first parliament of Manitoba, I have since procured printed copies of these Acts, and to facilitate the consideration of them, I inclose two printed copies of each of the said Acts.

In calling attention to my report contained in my despatch of the 15th March last, with regard to these Acts, I see no reason to modify the views therein expressed, unless it be to say, that with regard to the Act respecting the study and practice of the law, I reserved it, as a similar Act had been reserved in the previous session, and the royal assent refused thereto.

As the Act is within the power of the legislature, I think the better course would be to allow the Act to take effect, suggesting the amendment thereof, if any of its features be found objectionable.

I have, &c.,

ALEX. MORRIS,

*Lieutenant-Governor.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th February, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st February, 1874.

The undersigned to whom is referred certified copies of certain bills passed by the legislative council and assembly of the province of Manitoba in the session held in the 36th year of Her Majesty's reign, but which were reserved by the Lieutenant-Governor for the signification of the pleasure of his Excellency, has the honour to report as follows:—

That the bill intituled: "An Act to amend the Act 35th Victoria, chapter 20, for the prevention of Prairie Fires, and for other purposes," provides, amongst other things, that surveyors, railway companies and contractors shall be liable for the result of fires caused by any of their men, irrespective of the fact whether there was negligence, or whether the men were at the time under the control of the employers, provisions which appear likely to seriously interfere with the survey of public lands.

In this view the undersigned recommends that the Governor General's assent be not given to the bill in question.

That the bill chaptered 42, and intituled: "An Act to impose a tax on Wild Lands" has also been reserved.

As to this, the Lieutenant-Governor reports that the Act is a proper one, and he, therefore, recommends that it be sanctioned without delay.

The Act proposes an annual tax upon all lands of the province, except such as are hereby exempted, and these exemptions comprise lands vested in Her Majesty: Lands held for the benefit of any Indian; lands entered as homesteads, and occupied under the "Dominion Land Act;" lands held by the Canadian Pacific Railway Company; and lands set apart for the half-breed minors, &c.

Under these circumstances the undersigned recommends that the assent of his Excellency the Governor General be given to this bill, and that the proclamation do issue accordingly.

That the bill chaptered 43, and intituled: "An Act respecting Aliens," has also been reserved.

In respect to this bill the Lieutenant-Governor of Manitoba in his despatch of the 15th of March, 1873, remarks as follows :—

"This is an Act copied from the English Act of 1870. Heretofore the titles to lands in this province have been long leases, but as henceforth titles to the soil will emanate from the Crown, and there are a few enterprising aliens resident in the province, I think the Legislation necessary.

"I reserved the bill, as at first I entertained some doubts as to the power of the legislature to deal with the subject.

"Under the British North America Act the legislation with regard to aliens is entrusted to the Dominion Parliament, while property and civil rights are under the control of the provincial legislatures.

"I have come to the conclusion that as the Act deals only with the holding of property by aliens, and declares the existing disqualifications from serving as jurors, a question which has already arisen, and was decided by the then chief justice, under the English laws in force here as now enacted, it is within the powers of the legislature, and I therefore recommend that it be sanctioned forthwith."

The undersigned concurs in the view taken by the Lieutenant-Governor in this respect.

He thinks it right, however, to call attention to the use of the word "parliamentary," in the first subsection, in the second section of the bill.

By the "British North America Act, 1867," sec. 17, a parliament is constituted for Canada, but a legislature for each province; the use, therefore, in this instance, of the word "parliamentary" may lead to confusion.

A similar case occurred in the province of Ontario, in the enacting of the 31st Vic., Ontario, chapter 30, section 12, in which franchise was enacted for those entitled to vote at all "parliamentary" elections; and to correct the difficulties it was, in the subsequent session of the legislature of that province, 32 Vic., chapter 27, section 4, enacted that the "words 'parliamentary' elections" should be held and construed to mean and apply to the election of members in the Legislative Assembly of Ontario only."

The undersigned recommends that the Lieutenant-Governor's attention be called to this point with a view to its amendment by the legislature of Manitoba.

It is to be observed also that the same subsection provides that "No man, not being a natural born, or a naturalized, subject of Her Majesty, shall be qualified to serve as a grand or petit juror in any of the courts in this province on any occasion whatever."

The undersigned is of opinion that this clause, professing, as it does, to disqualify certain persons as jurors for the trial of criminal cases in the province of Manitoba, is not within the jurisdiction of that legislature.

The Parliament of Canada has already, by the "Criminal Procedure Act, 1869," 32nd and 33rd Vic., chapter 29, section 44, and by 34th Vic., chapter 14, provided as to the qualification of grand and petit jurors in criminal cases.

The undersigned does not, under the circumstances, recommend your Excellency to disallow this bill, but would respectfully recommend that the attention of the government of Manitoba be called also to this provision with a view to amendment.

That another of the bills reserved as before mentioned is one chaptered 44, and intituled: "The Half-breed Land Grant Protection Act."

Upon this bill the Lieutenant-Governor remarks as follows:

"It seems that speculators have bought largely from half-breeds their claims to allotments at low prices, ranging as low, in some cases, as \$15; the maximum being \$50. These sales, of course, only give the vendor a right of action to enforce the contract, when the vendor should become entitled to his land. The object of the bill is to cancel all these sales, and give the vendor an action to recover back the price which, if in goods, were to be charged at ordinary prices.

"The consideration is made a lien on the land, which may be sold for the recovery of the price paid.

"The only objections to the bill, the intention of which is no doubt good, are these, viz :—



"1st. It is retroactive, dealing with existing contracts, and cancelling them.

"2nd. It opens a fruitful door for litigation, the prices charged for goods being opened up for examination in each case where those formed part of the consideration.

"3rd. There is no machinery provided for carrying out the sale of the land, on which the lien is established, but this, of course, could be remedied next session.

"I have no sympathy with those who may have purchased these claims to lands at inconsiderable prices, or in an unfair manner, but as the law is novel and retroactive in its character, I feel compelled to reserve it for the signification of the pleasure of the Governor General, though it must be borne in mind also that if the Act be sanctioned it may be taken as a precedent for other restrictions with regard to the holding of these lands."

The undersigned is, however, of opinion that, having reference to the circumstances under which the appropriation of Dominion lands was made for half-breeds, and that it is recited in the bill that very many persons entitled to participate in the grant had agreed to sell their right, whilst, at the same time, they were in perfect ignorance what that right or its value eventually might be, the Act would be beneficial in protecting their interests.

It appears further that, in so far as purchasers of those rights are concerned, the bill proposes to protect them, and, if the machinery in this respect be not sufficient, it can be perfected at a future session of the legislature.

The undersigned has, therefore, the honour to recommend that the assent of his Excellency should be given to this bill, and that a proclamation to that effect should issue accordingly.

A. A. DORION,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th February, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th February, 1874.

The undersigned has the honour to report that a bill passed by the Legislative Council and Assembly of the province of Manitoba, in the session held in the 36th year of Her Majesty's reign, chapter 45, and intituled: "An Act to incorporate the Eastern Railway Company of Manitoba," was reserved by the Lieutenant-Governor for the signification of the pleasure of his Excellency.

The Act appears unobjectionable, and the undersigned has, therefore, the honour to recommend that the same should receive the assent of his Excellency the Governor General, and that a proclamation do issue accordingly.

A. A. DORION,  
*Minister of Justice.*

*Orders in Council giving assent to Chapters 42, 43, 44 and 45, published in the Canada Gazette on the 28th day of February, 1874, Vol. VII., No. 35, pages 1115 and 1116.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th September, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st August, 1874.

The undersigned has the honour to report, that the following Acts were passed in the third session of the first legislature of the province of Manitoba, viz.: Chapters 1, 3 to 27, 19, 20, 22, 23, 25 to 31, and 33 to 41.

The undersigned is of opinion that the above statutes should be left to their operation.

T. FOURNIER,  
*Minister of Justice.*



*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 7th September, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st August, 1874.

The undersigned has the honour to report that in the third session of the first legislature of Manitoba, was passed an Act, chaptered 2, and intituled: "An Act to define the privileges, immunities and powers of the Legislative Council, and of the Legislative Assembly of Manitoba, and to give summary protection to persons employed in the publication of Sessional Papers."

The Act in question seems to be a transcript of the Act of the province of Ontario of 1868, as to which the opinion of the law officers of the Crown in England was taken, and it was advised by them that it was not competent for the legislature to pass such an Act; and that it was inconsistent with the provisions of sections 92 and 96 of the British North America Act of 1867.

The Act of Ontario was accordingly disallowed.

The legislatures of Quebec and British Columbia fell into the same error.

The undersigned has, therefore, the honour to report that in his opinion the Act is objectionable; and he recommends that the same may be disallowed.

T. FOURNIER,  
*Minister of Justice.*

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 12th day of September, 1874—Vol. VIII., No. 11, page 262.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 7th September, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st August, 1874.

The undersigned has the honour to report, in reference to certain Acts passed by the legislature of Manitoba in the year 1873, as follows:—

36 Victoria, chapter 18.—"An Act to amend the Act concerning the Registration of deeds, and to introduce a better system of Registration."

Section 53 provides that persons committing certain offences therein specified, shall be held guilty of misdemeanour. This, being criminal law, is not within the competence of the legislature of the province.

The undersigned recommends, therefore, that communication of this report should be made to the Lieutenant-Governor of Manitoba, with the suggestion that the provision in question be repealed.

Chapter 21.—"A Bill intituled: 'An Act to make provision for inquiries concerning public matters.'"

Section 2 provides that any false statement on oath before commissions shall be misdemeanour, punishable in the same manner as wilful and corrupt perjury.

The remarks made on the preceding chapter are also applicable to this, and the undersigned has the honour, therefore, to recommend that communication be had with the Lieutenant-Governor of Manitoba, with a recommendation that the section be repealed.

Chapter 24.—"An Act respecting Municipalities."

Section 16 provides that a person making a false declaration as to his right to vote shall be guilty of misdemeanour, and on a summary conviction thereof shall be sentenced to imprisonment or fine.

The same remarks apply to this as to chapters 18 and 21, and the undersigned recommends that communication be had with the Lieutenant Governor, with a view to the repeal of the objectionable clause.

T. FOURNIER,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 7th September, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st September, 1874.

Upon an Act passed in the third session of the first legislature of Manitoba intituled: "An Act to incorporate the Winnipeg Board of Trade."

The undersigned has the honour to report that in 1873 this Act was passed by the legislature of the province of Manitoba, chaptered 32.

The undersigned is of opinion that the incorporation of boards of trade, not being for provincial objects only, but treating of trade and commerce—a subject within the exclusive control of the Parliament of Canada only,—rests with that parliament.

In the session of the Parliament of Canada lately held, provision was made by which persons, on application, can be incorporated as boards of trade.

The undersigned recommends, therefore, that this Act be disallowed.

T. FOURNIER,

*Minister of Justice.*

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 7th September, 1874, Vol. VIII., No. 11, page 262.*

*Lieutenant-Governor Morris to the Hon. the Secretary of State for Canada.*

GOVERNMENT HOUSE, FORT GARRY, MAN., 10th October, 1874.

SIR,—I have the honour to acknowledge your despatch of the 14th September last, informing me, for the benefit of the government, of the disallowance of the Act passed by the legislature of Manitoba, on the 8th of March, 1873, defining the privileges and immunities of the Legislative Council and Legislative Assembly of Manitoba, and transmitting the Order in Council disallowing the same, on the ground that the Minister of Justice had reported "that he was of opinion that it was not competent for the legislature to pass such an Act."

As the subject of the Act is one of importance, and materially affects the position of the legislature, I have been requested by the Executive Council of Manitoba to apply to the Privy Council for information as to the reasons which led the Minister of Justice to report that the Act was beyond the powers of the legislature, in order that another bill within their powers may be submitted to the House at the approaching session.

The council feel that in this new community, with a legislature composed, of necessity, of members untrained to parliamentary practice, every support ought to be accorded to them by the Privy Council in the difficult work of legislating for the varied wants of this rising society, and the same consideration ought to be extended to their enactments, as is shown to those passed by the more powerful provinces of the Dominion.

I am requested by the council to say, that they believed that the Act in question was within the powers of the legislature, and that they had good reason so to believe, is apparent from the facts that the legislature of Ontario had passed an Act of a similar character, 32 Vic., cap. 3, which was assented to on the 19th December, 1868; that the legislature of Quebec passed an Act of the same nature, 32 Vic., cap. 4, which was assented to on the 5th April, 1869, and that the legislature of British Columbia passed an analogous Act, 45 Vic., cap. 4, which was assented to on the 11th April, 1872.

With these precedents before them, the legislature were justified in passing the Act in question, and I felt that it was right for me to assent thereto, as I examined the legislation of the other provinces before doing so, and I was and am not aware that any of the above-mentioned Acts were disallowed by his Excellency the



Governor General in Council ; and, if such be the case, it is natural that the Executive Council should desire to be furnished with the reasons which induced the Minister of Justice to report that the Act in question was not competent for the legislature to pass, especially as its disallowance places the legislature in an exceptional and less favourable position as compared with the other legislatures of Ontario, British Columbia and Quebec, if the Acts above alluded to were to go into operation ; and they therefore respectfully request that they may be supplied with full information on the subject, in order to guide the legislature in dealing with so important a subject as to its privileges and immunities.

I would further call your attention to the fact that the disallowed Act is, with the single exception of clause one, which relates to the legislative council, a transcript of the Ontario Act, while that clause is to be found in the Quebec Act.

The council desire me to express their regret that the Privy Council did not see fit to communicate with them before proceeding to the extreme step of disallowing the Act in question. A session of the legislature took place after the receipt of the Act in Ottawa, and if the objection of the Minister of Justice had been submitted to the Executive Council, it would have been in their power to have amended or repealed the Act.

I have, &c.,

ALEX. MORRIS,  
*Lieutenant-Governor.*

*Mr. Under Secretary Langevin to the Lieutenant-Governor of Manitoba.*

DEPARTMENT OF THE SECRETARY OF STATE, OTTAWA, 16th November, 1874.

SIR,—I have the honour to inform you that his Excellency the Governor General has had under consideration your despatch of the 10th ultimo, in reference to the disallowance by his Excellency in Council of an Act of the legislature of Manitoba, defining the privileges and immunities of the legislative council and assembly of that province, and urging that as a similar Act had been passed by the legislatures of Ontario and British Columbia, you would be glad to know the reasons which had led to the disallowance of the Act in question, passed by the legislature of Manitoba.

I am directed to state that his Excellency is advised that the Act of Ontario, to which allusion is made in your despatch, is the 32 Vic., cap. 3, (1868) and that the then Minister of Justice reported that "by the 18th clause of the 'British North America Act, 1867,' it is enacted that the privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Commons of the Dominion of Canada shall be such as shall be from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those held, enjoyed and exercised at the passing of such Act by the House of Commons of the United Kingdom.

"It is to be assumed that the power to pass an Act defining those privileges was conferred upon the Parliament of Canada on the ground that, without such provision, the Parliament of Canada could not have passed any such Act.

"It is clear from the current of judicial decision in England that neither of the branches of a colonial legislature has any inherent right to the privileges of the Imperial Parliament.

"Perhaps, however, under the legislative powers given to the Parliament of the Dominion by the 91st section of the Union Act to make laws for the peace, order, and good government of Canada, it might have passed an Act without any enabling power from the paramount authority, establishing and defining the privileges of its two chambers. However this may be with respect to the general Parliament, it is to be observed that there is no clause in the Union Act similar to the 18th, giving to the provincial legislatures power to define or establish their privileges, and that no general power of legislation for the good government of the provinces are given to their legislatures. Their powers are strictly limited to those conferred by the 92nd, 93rd, 94th and 95th clauses of the 'Union Act.'



"By the Act in question it will be seen that the legislature of Ontario has declared that the legislative assembly and its members shall enjoy the same privileges as those exercised by the House of Commons of Canada.

"It would seem, therefore, that this Act is in excess of the powers of the provincial legislature. If it has any power to legislate in the matter at all, it seems to follow that while the general parliament can, under the 18th clause, confer no greater privileges than those enjoyed in the Imperial House of Commons, the provincial legislature, being bound by no such limitation, might, if it were so disposed, confer upon itself and its members, privileges in excess of those belonging to the House of Commons of England."

I am further to inform you that this statement upon which the Minister of Justice so reported, was referred for the opinion of the law officers of the Crown in England, and that they gave their opinion that it was not competent for the legislature of the province of Ontario to pass the Act, and they considered it inconsistent with the provisions of sections 92 and 96 of the British North America Act.

In consequence the Act in question was disallowed by the Governor General, as will be seen by reference to the *Canada Gazette* of the 4th December, 1869.

As to the Act of the province of Quebec of the same tenor as that of Ontario, being 32 Vic., cap. 4, 1869, action was taken and it was disallowed, as will be seen by the *Canada Gazette* of the 4th December, 1869.

Reference is also made in your despatch to the Act of the legislature of British Columbia of 35 Vic., cap. 4, based on that of Ontario before mentioned.

This Act was repealed by the Act of British Columbia of 1873, 36 Vic., cap. 35. They appear to have passed another Act on the same subject during the same session, No. 42.

In making the above communication I am directed to add that the government are anxious at all times to aid the Lieutenant-Governor and Council of Manitoba in respect to the legislation of that province, so far as they can possibly do so.

I have, &c.,

EDOUARD J. LANGEVIN,  
*Under Secretary of State.*

*Lieutenant-Governor Morris to the Secretary of State of Canada.*

GOVERNMENT HOUSE, FORT GARRY, MAN., 10th October, 1874.

SIR,—I have the honour to inform you that I am in receipt of your despatch of the 7th ultimo, intimating that "An Act to incorporate the Winnipeg Board of Trade," passed on the 8th day of March, 1873, by the legislature of Manitoba, had been disallowed on report of the Minister of Justice "that it was not competent for the legislature to pass such Act."

Having laid your despatch before the Executive Council of Manitoba, I have been requested by the council to apply to you for information as to the legal reasons upon which the Minister of Justice bases his opinion.

I am aware that the Parliament of the Dominion has incorporated a number of boards of trade, and, on recent receipt of the statutes of last session, I observe that a General Act has been passed by the Dominion for the incorporation of such bodies, but the council think there is serious question whether the incorporation of such bodies does not fall within the powers of the local legislatures, as being "companies with provincial objects," under the British North America Act.

If, however, it is decided that all Acts of the local legislatures that may hereafter be passed to incorporate boards of trade shall be disallowed, and the exclusive right of the Dominion Parliament to incorporate such bodies is determined to be included under the powers conferred by the British North America Act on that Parliament, "for the regulation of trade and commerce," the council have no desire to press the matter of this particular Act further; but they, nevertheless, wish to be in a position to satisfy the legislature of the province that there were good and sufficient reasons for the disallowance of the Act in question, especially as similar Acts have been passed by the legislature of Ontario, and have been permitted, as they believe, to go into operation

I refer to the Act of Ontario, 31 Vic., chap. 64, incorporating the Guelph Board of Trade, which was then evidently regarded as being within the competence of that legislature, as in the next session two clauses of it were repealed, the one dealing with criminal law, and the other with the inspection of articles of commerce, by the repealing Act 32 Vic., chap. 25, which dealt with that and other Acts, which in any way transcended the local powers, the said Act evidently having been passed, in conformity with a report of the Minister of Justice, on the several Acts, comprehended within its scope.

I also refer to the Act of Ontario, 35 Vic., chap. 73, which incorporated the Kingston Board of Trade, and I have no reason to believe was disallowed by the Governor in Council.

The subject of the jurisdiction with regard to this Act, to incorporate the Winnipeg Board of Trade, was discussed by the Executive Council at the time, and the fact of the passage of the two Acts in question largely influenced them in assenting to the adoption of the Act, which has now been disallowed, as they contend that the legislature of Manitoba possesses equal legislative power with that of Ontario.

The disallowance of this Act leads me to suggest that it may be worthy of consideration whether in the event of the disallowance of an Act of a local legislature, the fact of the disallowance together with its cause, should not, in addition to the notice in the *Canada Gazette*, be communicated to the other local governments.

The newer provinces of the Dominion are naturally led to avail themselves of the advantage of the legislation and experience of the older provinces, and if the governments were advised of such disallowances, difficulty might be avoided, arising from the adoption by a legislature of an Act which had been passed by another parliament, but which had been disallowed by the Governor General in Council.

Soliciting an early reply,

I have, &c.,

ALEX. MORRIS,  
*Lieutenant-Governor.*

*Mr. Under Secretary Langevin to Lieutenant-Governor Morris.*

DEPARTMENT OF SECRETARY OF STATE, OTTAWA, 16th Nov., 1874.

SIR,—I have the honour to inform you that his Excellency the Governor General has had before him your despatch of the 10th ultimo, in reference to the disallowance by his Excellency in Council of an Act of the legislature of the province of Manitoba, incorporating the Winnipeg Board of Trade, and in which you ask for information for your Executive Council as to the legal reasons for the disallowance of that Act.

I am now directed to state that his Excellency is advised that, upon the passing by the legislature of Ontario in 1868, of the Act to incorporate the Board of Trade of Guelph, to which you make allusion, the then Minister of Justice reported "that it may be doubted," &c. (as in Report.—See page 81 ante.)

It would appear now that it has been generally conceded that, for the reasons before given, it is not within the competence of a local legislature to pass such a measure.

It will be observed by reference to the statutes of the Parliament of Canada, that incorporation has been made of boards of trade in various provinces, *e.g.*, that of St. Johns, in the province of Quebec, by 37 Vic., chap. 52. A provision has been made generally for the incorporation of various boards of trade in the Dominion by the Act of 1874 (37 Vic., chap. 51), which was introduced into the House of Commons by the Honourable Mr. Blake.

I am to add, with reference to your suggestion, that in the event of the disallowance of an Act of the local legislature, the fact of the disallowance, together with the cause, should be communicated to the local governments, that his Excellency is advised that the suggestion may well be adopted in future.

I have, &c.,

EDOUARD J. LANGEVIN,  
*Under Secretary of State.*



## MANITOBA, 37TH-38TH VICTORIA, 1873-74.

## 4TH SESSION—1ST PARLIAMENT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th January, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th January, 1875.

The undersigned, to whom is referred copies of the statutes of the legislature of Manitoba, passed in the first part of the fourth session, held in the year 1873, and in the 37th year of Her Majesty's reign, has the honour to report :

That the following Acts appear unobjectionable, and he recommends that they be left to their operation, that is to say :—

Chap. 1 : "An Act to amend the Acts relating to the Court of Queen's Bench."

Chap. 2 : "An Act to provide for the enlargement of the Boundaries of Manitoba on equitable terms."

Chap. 3 : "An Act to amend an Act, intituled 'An Act respecting Municipalities.'"

Chap. 4 : "An Act to amend an Act respecting the Office of Speaker of the Legislative Assembly."

Chap. 6 : "An Act to amend 36th Vic., chap. 6, of the Statutes of Manitoba."

With reference to chapter 5, intituled : "An Act to provide for a fair and equitable redistribution of the Electoral Divisions of the Province," the Lieutenant-Governor remarks that a careful examination of the measure convinces him that the Act would require to be amended when the legislature resumed its session, as the measure was seriously defective owing to its framers not having fully understood that the settlement belt was not surveyed into townships, but in regard thereto the original parishes and private holdings have been respected, the bill having been framed on the basis of township surveys.

The Lieutenant-Governor therefore recommended that the action of the legislature at the resumption of the adjourned session should be awaited before the Governor General arrived at any conclusion with regard to the Act in question.

It appears by the Acts passed in the subsequent portion of this session, held in the 37th Victoria, that an Act with a similar title chapter 8, was assented to in July, 1874, by the Lieutenant-Governor, by which the Act immediately under consideration is virtually repealed and a new redistribution made.

The undersigned therefore recommends that the Act now under consideration be left to its operation, in so far as the same can have operated.

With reference to chapter 7, intituled : "An Act to incorporate the City of Winnipeg," the undersigned has the honour to report as follows :—

Section 1 gives power to the corporation "of giving or accepting any notes, bonds, obligations, judgments or other instruments or securities for the payment of any sum of money borrowed or loaned, or for the executing or guaranteeing the execution of any duty or thing whatsoever."

This provision seems in its terms so broad and unrestricted as to entrench upon the subject of banking.

The usual provision inserted in the Acts of the Parliament of Canada upon a corporation similarly constituted is, that they may become parties to promissory notes for sums not less than \$100 ; but provided that nothing in the Act contained shall be construed to authorize the corporation to issue notes or bills of exchange payable to bearer, or intended to be circulated as money, or as notes or bills of a bank.



The undersigned suggests, therefore, that this section should be modified and restricted.

Section 16 provides that "all constables and persons present at the election shall assist the returning officer or justice of the peace, on pain of being guilty of a misdemeanour."

The undersigned is of opinion that the constituting of an offence a misdemeanour is a branch of criminal law, and, therefore, not within the legal competence of the legislature of Manitoba.

He recommends, therefore, that the clause should be modified, by omitting the constitution of the offence as a misdemeanour, and providing some definite punishment therefor.

Section 90, subsection 10, provides for prohibiting the sale by retail, of spirituous, &c., liquors, in any inn or other house of entertainment, and prohibiting the sale thereof in shops and places other than houses of public entertainment, provided by the by-law, before the final passing thereof, has been duly approved by the electors of the city in the manner provided by the Act.

The undersigned entertains doubts whether it is within the legislative competence of a provincial legislature to pass a law, which absolutely prohibits the sale of liquors, and whether it is not an interference with the parliamentary power of Canada to legislate in respect to the regulation of trade and commerce.

Section 95 provides for the passing by the council of Winnipeg of by-laws, appointing inspectors, for visiting all places wherein weights and measures, steel-yards, or weighing machines of any description are used, and having seized and destroyed such as are not according to the standard, and for imposing and collecting penalties upon persons who are found in possession of unstamped or unjust weights, measures, steel-yards, or other weighing machines.

As by the British North America Act, 1867, the subject of legislation is left exclusively to the legislative authority of the Parliament of Canada, the undersigned doubts whether the legislature of a province can pass any enactments on this subject.

The undersigned recommends that these views be communicated to the Lieutenant-Governor for the consideration of his ministers.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur.

T. FOURNIER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th January, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th January, 1875.

Upon the reference of the statutes passed by the legislature of the province of Manitoba, at the second portion of its fourth session, 1874, the undersigned has the honour to report:—

That the following Acts appear to be unobjectionable, and he recommends, therefore, that the same be left to their operations: Chapters 8 to 11, 13, 16 to 18, 21 to 24.

With reference to the other statutes passed at that session, the undersigned has the honour to report as follows:—

Chapter 12. "An Act respecting the court of Queen's Bench in Manitoba."

The second section enacts that the "Court of Queen's Bench \* \* \* shall pass and exercise all such powers and authorities as by the laws of England are incident to a superior court of record, of civil and criminal jurisdiction, in all matters civil and criminal, whatsoever, and shall have, use, enjoy and exercise all the rights, incidents and privileges as fully, to all intents and purposes, as the same were on the

day and the year aforesaid possessed, used, exercised and enjoyed by any of her Majesty's superior courts of common law, at Westminster, or by court of chancery, at Lincoln's Inn, England."

The third section provides that the Court of Queen's Bench shall sit as a court of oyer and terminer and general jail delivery, and of assize and nisi prius, for the trial of all criminal offences, &c., and shall possess and exercise all the powers possessed and exercised by the same court of England.

The seventh section enacts that the Court of Queen's Bench shall possess the same powers, authorities and jurisdiction as the Court of Chancery in England possessed on the 15th day of July, 1870.

Upon these sections the undersigned deems it proper to remark that it is impossible to enter fully into the powers and authorities established and exercised by Her Majesty's superior courts of common law, or by the Court of Chancery in England, or all the courts of oyer and terminer and general jail delivery.

Those powers and privileges have been exercised by these courts in England from remote times, and have accrued to them partly by custom and usage, and partly by statutable authority.

Whilst under the British North America Act, 1867, the legislature of a province has the power to legislate in respect to the administration of justice in the province, including the constitution of courts of criminal jurisdiction, yet it is reserved to the Parliament of Canada to legislate upon the criminal law, including the procedure in criminal matters, and it may be a grave question whether the assumption to the Court of Queen's Bench of Manitoba, of similar powers and privileges to those exercised by the superior courts in England, may not entrench upon the criminal procedure, as it is at present regulated by Acts of Parliament of Canada.

This point is suggested for the consideration of the Lieutenant-Governor of Manitoba.

Chapter 14. "An Act respecting the Registration of Co-Partnership."

Chapter 15. "An Act to require certain foreign corporations, associations and co-partnerships to enregister within this province."

The first of these two Acts requires that all persons associated in partnership for trading, manufacturing or mining purposes in Manitoba, shall register in the Court of Queen's Bench, a declaration of the particulars respecting the partnerships, and there shall be penalties imposed in forfeiture of compliance therewith.

The undersigned quite recognizes the right of legislation for Manitoba in respect of any companies with provincial objects, which may be incorporated by the legislature, but it is possible that companies may be incorporated by the Parliament of Canada or under the "Joint Stock Companies' Act" of Canada, and the undersigned is of opinion that the application of the present Act to any such companies would be in restriction of the rights granted to them by Canada.

He suggests, therefore, the consideration of this point by the Lieutenant-Governor, with a view to amendment.

In respect to chapter 15, it is to be observed that it provides that no company incorporated by any foreign power, nor any co-partnerships carrying on any description of trade or commerce, any of which such persons are resident in the United States of America, nor the agents of any such, shall do business in Canada, until registration of the partnership is made, together with arrangements for effecting legal process upon the agent, and a penalty is imposed for failure in compliance with the Act.

The remarks which are made above apply somewhat similarly to the case, although, practically, the object contemplated is desirable, yet the Act appears to be in restriction of trade and commerce. It is also entrenching on the parliamentary powers of Canada.

An instance may be cited of the fact, in that by the Act of Canada, 31 Vic., chapter 48, insurance companies incorporated by some of the United States of America, are licensed expressly to do business in any part of Canada after compliance with the provisions of that Act, and if this chapter 15 remained as it is, it would be in direct conflict with the Act in question.



Under these circumstances, the undersigned recommends that the Lieutenant-Governor should consider the propriety of the same being repealed.

Chapter 19. "An Act to amend the Act of 1873, to regulate the sale and traffic of intoxicating liquors."

Section 1 provides that no person shall be granted a license to sell intoxicating liquors by retail, in Manitoba, outside the limits of the city of Winnipeg, &c., &c. It is presumed that it is intended that no person shall be granted, by the proper provincial authority, a license, &c., so that the section shall not act in restriction of the Parliament of Canada in this respect.

The undersigned recommends that this Act be also called to the attention of the Lieutenant-Governor.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur.

T. FOURNIER,  
*Minister of Justice.*

*Lieutenant-Governor Morris to the Secretary of State of Canada.*

GOVERNMENT HOUSE, FORT GARRY, MANITOBA, 15th March, 1875.

SIR,—In reply to your despatch of the 16th of January, respecting the Acts of the legislature of Manitoba, passed during the fourth session, thereof, and chaptered 12, 14, 15 and 19, I inclose, by request of the Executive Council, a copy of a minute of council adopted by them, for which they ask the consideration of the Privy Council. As regards chapter 12, I have also been requested by the council to inclose herewith a copy of a report of the chief justice of Manitoba respecting chapter 12, being the Act relating to the Court of Queen's Bench.

I may state that the Act referred to was prepared for the council by the chief justice, at their request.

I am further to request a reply at your earliest convenience, as the legislature will meet on the 31st instant.

I have, &c.,

ALEX. MORRIS,  
*Lieutenant-Governor.*

*Extracts from Minutes of Council held at Government House, Fort Garry, on the 9th day of March, A. D. 1875.*

Council recommended the adoption of the following minute, relating to the report of the Minister of Justice upon the Acts of Manitoba, 38 Vic., chapters 12, 14 and 15, and request the Lieutenant-Governor to forward a copy of the same to the Hon. the Secretary of State, for the consideration of his Excellency the Governor General in Council.

The Council having had under consideration a despatch of the 16th January last to the Lieutenant-Governor from the Secretary of State for Canada, inclosing an extract from a report of the Minister of Justice, with regard to statutes 12, 14 and 15 of the Acts of the fourth session of the first legislature of Manitoba, have agreed to the following minutes: 1st, with regard to the Act respecting the Court of Queen's Bench of Manitoba, the council do not think that any difficulty such as the Minister of Justice suggests, can arise from the passage of the Act in question.

The council are fully aware that the legislature of Manitoba has no power to legislate with regard to criminal law or the procedure in criminal matters, and they contend that the Act in question does not in any way interfere therewith.



The Act was deemed necessary, inasmuch as the statutes of Assiniboia provided that the proceedings of the general court should be regulated by the laws of England not only of the date of her present Majesty's accession, but also such laws of England of subsequent date, as may be applicable to the same.

Under the Manitoba Act, and the British North America Act, all laws in force at the union, and all courts of civil and criminal jurisdiction were continued in force. At the date of the union there was a court of civil and criminal jurisdiction existing in Assiniboia. The quarterly court, and the common and statutory laws of England were in force, and these were continued.

In 1871 a court was constituted for Manitoba by the Act of Manitoba, 34 Vic., chap. 2, with jurisdiction in all matters of law and equity, all matters of wills and intestacy, and possessing such powers and authorities in relation to matters of local and provincial jurisdiction, as in England are distributed among the supreme courts of law and equity, and of probate, and until the appointment of a judge of the Supreme Court, those powers were declared to be inherent in the general court then in existence.

In 1872 the name of the court was changed to that of the Court of Queen's Bench, by the Act 25 Vic., chap. 3, and it was declared to possess an appellate civil and criminal jurisdiction, and also the jurisdiction of a court of error.

The object of the Act, criticized in the Minister of Justice's report, was to declare the period at which the laws of England should cease, under the local statutes of Assiniboia, to be operative in Manitoba, as was done in the old province of Upper Canada by the Act 2, George III., cap. 1.

The legislature having no powers to legislate with regard to criminal law, the Act can only be held to deal with matters within the powers of the local legislature, but it declares what was and is the fact, that the laws relative to property and civil rights existing in England on the 15th of July, 1870, so far as the same can be made applicable to property and civil rights, were in force here on that date, the object being to repeal the clause of the Assiniboia statute, which adopted the statute law of England, as from time to time enacted.

The English common law and the whole body of the statute law of Great Britain and Ireland, having been in force here on the 15th of July, 1870, and the legislature being authorized to make laws for the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts, it seems clear that the legislature has not exceeded its powers in declaring that the Court of Queen's Bench possessed all the powers of a superior court of civil and criminal jurisdiction as these were possessed in England on the 15th July, 1870, but in the exercise of these powers the court will be limited and controlled by the laws of England as they were on the 15th July, 1870, and by the laws of Canada relating to criminal matters or procedure with regard to criminal cases and other subjects within their jurisdiction, passed or to be passed since the union.

The council regard the Act in question as one of great importance, inasmuch as it prevents the English statute law from running into this province after the date in question, and gives the court the benefit of the decisions of the English courts on the statute law up to that period, while it is clear that in its operation it cannot be held to deal with criminal jurisdiction or criminal matters, which are *ultra vires* as regards the legislature of a province.

The clauses of the Act above alluded to, and to which objection is taken, are, in effect, similar to, and are in almost the words of the Act passed in Upper Canada, in relation to the constitution of the courts there, in a province where, as here, the old common law prevailed, and under which these courts still act. (*Vide Consolidated Statutes of Upper Canada*, chap. 10, sec. 31.)

The council, therefore, trust that on re-consideration, the Minister of Justice will withdraw his objections to the Act in question, and that the Privy Council will leave the Act to its operation, and to its interpretation by the court, in conformity with the laws in force in Manitoba.

2ndly.—With regard to the Act respecting the registration of co-partnerships, chapter 14, deals with a subject which the council are of opinion, is strictly within the province of the legislature.

They are strengthened in this view by the fact that a similar Act was passed by the legislature of Ontario, viz., the 33rd Vic., cap. 20, which was amended by the 35 Vic., cap. 28.

With regard to joint stock companies incorporated by the Dominion, the council see no objection in excepting these from the operation of the Act, nor in fact to limiting the operation of the Act entirely to commercial partnerships.

As respects these, the council can see no infringement of the power over trade and commerce enjoyed by the Dominion, in subjecting partnerships for trading, manufacturing or mining purposes in this province to the necessity of giving information to the community, as to the persons composing such partnerships. They believe such a regulation to be within the scope of their powers, and they assert the same right to exercise these powers, it having been acknowledged to exist in the legislature of Ontario.

3rdly.—With regard to the Act, chapter 15, respecting foreign corporations, the council attach a large measure of importance to this measure, and are not disposed to repeal it, though it may be beneficially amended in some respects. The necessity for the Act was beyond question, and the council believe that in passing it the legislature did not infringe on the powers of the Dominion Parliament.

Before the passage of this Act, to take one notable instance, there was no means of enforcing process against a company of traders, who had in their control exclusively the carrying trade by steamers and barges between the city of Winnipeg and Moorhead. The council are of opinion that as the legislature is empowered to legislate with regard to all matters of civil procedure, it has a right to subject foreign corporations or partnerships trading here, to the necessity of affording to the community facilities for the effecting of the service of process on them, in order to which, in the case of unincorporated partnerships or associations, the disclosure of the names of the persons composing them is essential. The doing this is no hardship on such partnerships, while it is in the public interest.

The council see no objection to exempting American fire insurance companies, who have made the deposit required by the Dominion statute cited, from that portion of the local Acts which required the disclosure of the names of the shareholders, but they are of opinion that they should remain subjected to the provisions of the Act affording facilities for service of process.

In this sense the council would be disposed to ask the legislature to amend the Act, but they have the strongest possible objections to its total repeal.

4thly. With regard to the Act respecting the sale of intoxicating liquors, the Act merely substitutes a new section for a similar section in the License Act of 1873, which provides for the issue of licenses by the local authorities. Read with that Act, there does not seem to be any ambiguity, but if there be it can be removed.

SEDLEY BLANCHARD,

*Clerk of the Executive Council.*

*Report of Hon. Chief Justice Wood to His Honour Lieutenant Governor Morris.*

WINNIPEG, 1st March, 1875.

DEAR SIR,—The question raised is, as to the Court of Queen's Bench as a court of criminal jurisdiction.

As a criminal court the Queen's Bench in Manitoba is by the Act criticized (38 Vic., chap. 12), indeed it was by former Acts, invested and clothed with all the powers, rights, privileges and incidents appertaining to the superior courts of law at Westminster, in England, on the 15th July, 1870, as respects its capacity, ability,



authority and power to deal with crime and criminals, and the criminal law of England, and the procedure in administering the same (as was in fact already done by Imperial and Canadian Acts, made applicable to Manitoba), are adopted, except as the same had already been changed, modified or superseded by any Act or Acts of the Parliament of Canada.

It is said "it may be a grave question whether the assumption by the Court of "Queen's Bench in Manitoba of similar powers and privileges to those exercised by "the superior courts in England, may not entrench upon the Criminal Procedure "Act as it is at present regulated, or may hereafter be regulated by the Acts of the "Parliament of Canada."

There can be no question "the criminal law, except the constitution of courts "of criminal jurisdiction, but including the procedure in criminal matters," is exclusively within the legislative jurisdiction of the Parliament of Canada, and the meaning of the "criminal law" and "the procedure in criminal matters," and "the constitution of courts of criminal jurisdiction," or "the administration of "justice of the province, including the constitution, maintenance and organization of "provincial courts both of civil and criminal jurisdiction, and including procedure in "civil matters in those courts," are so plain, perspicuous, and so free from all ambiguity, and the limits of the legislative jurisdiction of the Parliament of Canada and of the legislatures of the provinces, are so definitely and distinctly marked in terms, level to the plainest understanding, that it is with some difficulty and considerable effort one is enabled to apprehend any doubt as to the proper construction of the Constitutional Act, in regard to the distribution of the legislative powers respectively conferred on Canada on the one hand, and the provinces on the other, or the gravity of the question arising as to the constitutionality of the provisions referred to, in the Manitoba Act under consideration.

However it may appear to others, lawyers will readily comprehend what is meant by "powers and authorities" inherent in, and inseparable from, a superior court of law, of record and of original jurisdiction, and inherent in, and inseparable from, a court of oyer and terminer and general jail delivery, and of assize and nisi prius. These powers and authorities have certainly nothing to do with the definition or creation of crime, or with the criminal law, or with the procedure in criminal matters, but are referable exclusively to the administration of justice, including the constitution and maintenance "and organization of courts both of civil and of criminal jurisdiction."

It is submitted, with great deference and respect, that the expression "all the courts of oyer and terminer and general jail delivery in England" implies a confusion of ideas, or a misconception in respect of the court of oyer and terminer and general jail delivery in England. There is but one such court known to the law in England, and that court, constituted by royal commission, and sitting from time to time, by virtue of commissions to the common law judges at Westminster, whereby they and those associated with them on the various circuits in England by jurors summoned according to law, at the several assize terms, hear and try treasons, felonies, &c., and every prisoner committed for every offence whatsoever, and clear the jails throughout the kingdom, directly springs from and forms, in fact part of the Queen's Bench. It is a criminal court, whose powers, authorities, rights, privileges and incidents are as well known to the English lawyer, as the name and nature of the commonest offence over which it has jurisdiction.

Not only are the provisions of the Act excepted to, manifestly within the legislative jurisdiction of the province, considered in the light of the British North American Act alone, but express independent authority is equally conclusive on the same point.

By its charter, the Hudson Bay Company had power to establish a court of original unlimited jurisdiction in matters both civil or criminal, and in or about the year 1839 such a court was constituted for the District of Assiniboia, called the "General Court." (Judgment of Wood, C. J., *Regina vs. Lepine*.)



In 1864 by an ordinance of the council of Assiniboia "the powers and authorities, and the practice and procedure of the general court, are regulated by the laws of England, not only of the date of her present Majesty's accession, so as they apply to the condition of the colony, but also by such laws of England of subsequent date, as may be applicable to the same; in other words, the proceedings of the 'general court' shall be regulated by the existing laws of England for the time being, in so far as the same are known to the court, and applicable to the condition of the colony."

It will be observed that the language used in the foregoing ordinance, with respect to the powers and authorities conferred upon the "general court," are quite as large, wide and comprehensive, as those excepted to in the Manitoba Act, with respect to its Court of Queen's Bench.

By the last clause of Rupert's Land Act (31-32 Vic., chap. 105, sec. 5) it is provided that Rupert's Land might be transferred to Canada, and that after such transfer the Parliament of Canada might make, ordain and establish within the land, all such institutions, and constitute such courts and officers, as might be necessary for the peace, order and good government of Her Majesty's subjects and others therein, "provided, that until otherwise enacted by the Parliament of Canada, 'all the powers, authorities and jurisdiction' of the several courts now established in Rupert's Land, and the several officers thereof, and of all magistrates and justices acting within the said limits, shall continue in full force and effect therein."

On the 15th July, 1870, Rupert's Land, with the Indian Territories of the Northwest, was transferred to Canada, and a part of Rupert's Land was erected into the province of Manitoba—being that part in which the general court had jurisdiction.

On the 14th April, 1871, the Parliament of Canada passed an Act extending to Manitoba certain Acts of its Parliament, relating to the criminal law and procedure in criminal matters; and by the 2nd section it is enacted and declared that the court known as the "general court," and any court thereafter to be established by the legislature of Manitoba, clothed with the powers and authorities of the general court, should have power to hear, try and determine, &c.

On the 3rd of May, 1871, a few days after the passing of the last-mentioned<sup>2</sup> Act, an Act was passed by the legislature of Manitoba (34 Vic., Chap. 2) establishing a supreme court in this province. The 1st section is as follows:—

"There shall be constituted a court of justice for the province of Manitoba, to be styled the Supreme Court, which shall have jurisdiction over all matters of wills and intestacy, and shall possess such powers and authorities in relation to matters of local or provincial jurisdiction, as in England are distributed among the superior courts of law and equity and of probate."

On the 21st February, 1872 (Manitoba Act 35 Vic., chap. 3), the name of the Supreme Court is changed to that of the Queen's Bench. There are two Acts following, regulating the times of the sitting of the court, and then comes 38 Vic., chap. 12, the Act whose provisions are impugned as *ultra vires*, which in fact does nothing more than express in appropriate and comprehensive language what, as has been already shown, in more than one instance, is found in the ordinance of Assiniboia, in the Imperial statutes, in the Acts of the Parliament of Canada and prior statutes of the legislature of Manitoba, which have never been questioned, no doubt for the obvious reason that constitutionally they were unquestionable.

It may not be inappropriate to observe what "powers and authorities" the supreme courts in the other provinces of the Dominion possess.

The Revised Statutes of Nova Scotia, part 3, page 27, section 1, read as follows:—

"The Supreme Court shall have within this province, the same powers as are exercised by the Courts of Queen's Bench, Common Pleas, Chancery and Exchequer in England."

In the Consolidated Statutes of Upper Canada, cap. 10, sec. 3, is found the following language:—

"The said courts (Queen's Bench and Common Pleas) shall be courts of record of original and co-ordinate jurisdiction, and shall respectively possess all such powers and authorities as by the law of England are incident to a superior court of civil and

criminal jurisdiction, and shall have, use and exercise all the rights, incidents and privileges as fully to all intents and purposes as the same are at the time this Act takes effect, used, exercised and enjoyed by any of Her Majesty's superior courts of common law at Westminster in England, and shall and may do all things appertaining to a superior court of record, in as full and ample a manner as on the time this Act takes effect, can or may be done in her Majesty's Court of Queen's Bench, Common Bench, or in matters which regard the Queen's revenue (including the condemnation of contraband or smuggled goods) by the Court of Exchequer in England."

In so far as it relates to the subjects under consideration, section 5 reads as follows:—

"And the Chief Justice and Justices of the said courts, respectively, shall use and exercise all the rights, incidents and privileges of a Judge of a court of record, and all other rights, incidents and privileges as fully to all intents and purposes as the same are, at the time the Act takes effect, used, exercised, or enjoyed by any of the Judges of any of Her Majesty's superior courts of Common Law at Westminster."

Chapter eleven of the same statute explains what is meant by a court of oyer and terminer and general jail delivery, and of assize and *nisi prius*. It is in England incident to springing from, and an emanation, and in fact is part of the Queen's own court.

Chap. 12, secs. 25 and 26 confer upon the court of chancery in Ontario substantially the same equity powers, and in almost precisely the same language as are in this respect conferred upon and employed in respect of the court of Queen's Bench in Manitoba.

By reference to the statutes establishing Supreme Courts of record of original jurisdiction in the other provinces substantially the same powers and authorities are conferred upon the courts by the same references, in the same language: but being the same in all this, it is thought it would be tiresome to make further reference or citations on the subjects, and I do not think it advisable to pursue the investigation in this direction any further.

Under these circumstances, one can ill-appreciate the "gravity of the question" suggested in the criticism on the Act 38 Vic., chap. 12, intituled: "An Act respecting the Court of Queen's Bench in Manitoba," unless Manitoba is to be placed in an inferior position to that conferred upon it by the British North American Act, and to that occupied by the other provinces of the Dominion.

I am, &c.,

E. B. WOOD,  
Chief Justice.

## MANITOBA—38TH VICTORIA, 1875.

1ST SESSION—2ND PARLIAMENT.

*Lieutenant-Governor Morris to the Hon. the Secretary of State of Canada.*

GOVERNMENT HOUSE, FORT GARRY, Man., 4th Nov., 1875.

SIR,—I have the honour to inclose herewith, for the signification of the pleasure of his Excellency the Governor General, with regard thereto, a duly certified copy of a bill, intituled: "An Act respecting Land Surveyors and the Survey of Lands in the Province of Manitoba," passed at the last session of the legislature, but which I reserved for submission to his Excellency the Governor General.

1. The great bulk of the lands in the province of Manitoba being yet crown lands belonging to the Dominion, the Act in question prohibits any one from acting as a surveyor of land in Manitoba unless possessing the qualifications specified in the bill,

2. The bill deals with the whole question of the mode of surveying lands in the province of Manitoba.

3. As the Dominion Lands Act, 35 Vic., chap. 23, provides who shall act as surveyors of Dominion lands, there would, if the bill were assented to, be a conflict of authority created by it.

4. The Dominion Lands Act provides for the mode of survey of Dominion lands.

5. The Dominion Lands Act provides for a board of examiners for the admission of deputy surveyors, and the local Act does likewise, so that there would be two boards dealing with this matter in the province.

6. The provisions of the bill are extremely illiberal and unjust with regard to surveyors coming from the other provinces, and would create a monopoly.

The first section prohibits any one from acting as a surveyor of lands in the province of Manitoba, unless qualified, firstly, under the laws of Assiniboia, or secondly, qualified by certificate, diploma or commission to survey in some one of the provinces of the Dominion of Canada, and having been employed as a Dominion land surveyor in the province of Manitoba previous to the passing of this Act, or thirdly, become qualified under the provisions of this Act.

7. The 11th section provides that any person becoming qualified, after the passing of the Act, to survey lands in some one of the other provinces, may be admitted as a surveyor by the board, after serving six months of actual practice in the field, with a land surveyor duly admitted and practising in Manitoba, and thereafter undergoing examination prescribed by the Act.

8. The effect of these two provisions is to shut out from surveying lands in Manitoba, all surveyors, qualified before the passing of the Act, in any other of the provinces, unless they had actually been employed in surveying lands in Manitoba, and to compel all such surveyors, qualified after its passing, in any of the other provinces, to submit to a practical apprenticeship of six months here, and to a new examination, thus in effect throwing, should the bill become law, the survey of lands in Manitoba, into the hands of a privileged few, and excluding men of experience from coming here to practise as surveyors.

9. While, for these substantial reasons, I reserved the bill for the signification of the pleasure of his Excellency the Governor General, I would remark that the question is not without difficulties; as the control of "property" is placed within the powers of the local legislatures, by the Confederation Act, an Act to provide for the survey of lands would seem to fall within their competence; but yet the lands are, with the exception of the small quantity that has been patented, Crown lands of the Dominion, and, there-



fore, it is to assumed, subject to their authority, as to the survey thereof as being "public property" with regard to which the Dominion possesses "the exclusive legislative authority."

I am disposed to think that it would be competent for the legislature to pass such an Act as the one proposed, if confined to the lands which have passed from the crown to private owners in the province, but in view of the whole circumstances of the case I would desire to be advised as to the opinion of the Privy Council with regard to this important question, in order that if the present bill be disallowed, the legislature may be guided in the framing of a new measure, should such be introduced next session.

I have, &c.,

ALEX. MORRIS,  
*Lieutenant-Governor.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 7th February, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th January, 1876.

Upon the reserved bill of the legislature of Manitoba, intituled "An Act respecting Land Surveyors and the Survey Lands in Manitoba," forwarded by the Lieutenant-Governor in his despatch of 4th November for the signification of the pleasure of his Excellency, the undersigned would refer to the approved report of his predecessor, dated 24th September, 1872, upon a reserved bill from the same province, intituled "An Act respecting Land Surveyors," and also to the minute approving the report. The undersigned would also refer to the despatch of the 4th November, inclosing the Act now under consideration.

The undersigned has caused communication to be had with the Minister of the Interior, who expresses the opinion that the bill is at present premature and unnecessary.

Under all the circumstances appearing in the despatch and other papers hereinbefore referred to, the undersigned recommends that the Governor General's assent be not given to the bill in question.

EDWARD BLAKE,  
*Minister of Justice.*

*Lieutenant-Governor Morris to the Hon. to the Secretary of State for Canada.*

GOVERNMENT HOUSE, FORT GARRY, MANITOBA, 19th July, 1875.

SIR,—I have the honour, in compliance with the request to that effect of the Minister of the Interior, to inclose a certified copy of an Act passed at the recent session of the legislature, to which I assented, and being intituled: "An Act to regulate proceedings against and by the Crown." In assenting to the Act in question, I believed that it only affected proceedings by and against the Crown, in so far as the same concerned the Crown in this province, with regard only to the provincial matters, and I still believe that the Act can only have that effect.

Since assenting to it, however, the chief justice, in a judgment, as reported in the *Nor' Wester*, of the 5th July (a report which I believe to be authentic), in a case where he held that a person who had been recognized in a homestead, could not, under the special circumstances of the case, bring a suit for trespass, as the right of soil was in the Crown, used the following language: It was an easy thing for the Crown to put off the defendant. All it had to do was to permit the plaintiff to file an "information of intrusion" against the defendant; or the plaintiff, under the Act of the session of the Manitoba legislature, may now, with the consent of the Crown, obtained from the

Crown lands agent, bring an ordinary action of ejectment in the name of the Queen, against the defendant, just the same as any ordinary action of ejectment may be included and conducted between individual subjects.

I do not concur in this view of the Act. The Dominion lands belong to the Crown, and the Crown acting by the Privy Council and Parliament of Canada alone, has control over them, and I do not think that the Provincial Act in question could apply to such lands. Moreover, under the terms of the Act, the Crown lands agent has no authority to allow a suit to be brought under it, as that power is expressly vested in the Lieutenant-Governor.

Entertaining the view of the Act I do, I would not allow any matter affecting Dominion lands to be litigated under it, but as the matter is one of importance, I submit it for the consideration of the Minister of Justice.

I believe that the scope of the Act is a proper one, but that it only affects the Crown, in so far as under the distribution of powers as defined by the Confederation Act, the Crown acts through the provincial executive, and that my assent to it should, therefore, be confirmed.

I have, &c.,

ALEX. MORRIS,  
*Lieutenant-Governor.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th June, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th May, 1876.

Upon an Act passed at the session of the legislature of Manitoba, held in the month of April, 1875, chapter 12, intituled: "An Act to regulate proceedings against and by the Crown," the undersigned begs to report:

That it appears from the despatch of the Lieutenant-Governor accompanying the Act, that since its passing the chief justice of Manitoba has judicially stated as follows:—

"It was an easy thing for the Crown to put off the defendant; all it had to do was to allow the plaintiff to file an 'information of intrusion' against the defendant; or the plaintiff, under the Act of the last session of the Manitoba legislature, may now, with the consent of the Crown obtained from the Crown lands agent, bring an ordinary action of ejectment in the name of the Queen against the defendant, just the same as any ordinary action of ejectment may be included and conducted between individual subjects."

The Lieutenant-Governor gives strong reasons for the view he himself entertains, that the Act in no particular affects the Crown in Canada, but only the Crown in Manitoba.

The Act is similar in many respects to that passed by the legislature of Ontario in 1872, upon which, in January, 1873, the then Minister of Justice reported as follows:—

"With respect to this Act, the undersigned recommends that the attention of the government of Ontario, be called to the fact that it is so general in its terms, that it might be held to apply to claims against the government of the Dominion.

"It is presumed that this is not the intention, as the second clause of the Act provides that the fiat for a petition of right must be granted by the Lieutenant-Governor of the province. Now, it is obvious that in case of claims against the Dominion, the fiat should be granted by the Governor General.

"The passing of a short Act removing the doubt is suggested."

The Minister of Justice in that case recommended that the Act should be left to its operation, but it does not appear that the legislature took any action upon the suggestion made in his report.

With reference to the province of Manitoba the same doubt arises, and its existence is of infinitely greater consequence, since the lands of Manitoba are lands belonging to the Crown in Canada, and the greater bulk of them are still ungranted, and consequently, should the doubt be well founded, most serious consequences might ensue.

The observations of the highest legal authority of the province add also in this case to the difficulty of leaving the Act to its operation.

It is to be observed that the Parliament of Canada in the Petition of Right Act passed during last session, recited the intent of that Act to be, to make provisions for the institution of suits "against the Crown in *Canada*" by petition of right, and thus took pains to avoid the suggestion or reference to that Act of the doubt referred to.

The undersigned inclines to the opinion that the view of the Lieutenant-Governor is correct, but having regard to the judicial opinion already referred to, and seeing that but little or no inconvenience is likely to result from the absence for a short time of legislative provision in the particulars dealt with by the Act, the undersigned is of opinion that the safer course is to exercise the power of disallowance. The provincial legislature will thus be free to pass a statute which, being confined in so far as it purports to authorize proceedings against the Crown to matters affecting the Crown in Manitoba, will avoid the suggested difficulty.

With reference to that clause of the statute upon which the judicial opinion already referred to proceeded, namely, the 7th, it appears to the undersigned that although from the reasoning of that opinion would flow the results suggested by the Lieutenant-Governor, yet other considerations arise as to the expediency of more extensive legislation and the competency of the provincial authorities to pass it, and the undersigned is of opinion that it would be advantageous in any fresh legislation upon this subject, if the provincial legislature should think fit, without attempting to withdraw any of the existing rights as to procedure or otherwise of the Crown in Canada, to authorize the Crown in Canada to proceed in Manitoba as the subject may, though it would not be competent for the provincial legislature to provide for the payment of cost of such proceedings by the Crown in Canada, the statutory arrangements for which purpose would no doubt be made by the Parliament of Canada.

The undersigned on the whole recommends that the said Act be disallowed.

EDWARD BLAKE.

*Minister of Justice.*

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 10th day of June, 1876, Vol. IX., No. 50, page 1598*

*Lieutenant-Governor Morris to the Hon. the Secretary of State of Canada.*

GOVERNMENT HOUSE, FORT GARRY, MAN., 9th August, 1875.

SIR,—I have the honour to inclose two advance copies of some of the more important statutes of the last session of the legislature of Manitoba, passed by them and assented to by me. With regard to the first of these, cap. 5, "An Act respecting the Administration of Justice," I have to call attention to clauses 58 to 61, which I think are *ultra vires* of the powers of a local legislature, and trench on the powers of the Dominion.

The bill was prepared by the chief justice. I called the attention of the ministry and of the chief justice to my objection at the time, but the clauses were retained.

As there was much of value in the bill, I did not think it desirable to reserve it, but determined to call the attention of the Minister of Justice to the clauses in question, as, if he shares my view, they can be repealed next session.

I have, &c.,

ALEX. MORRIS,

*Lieutenant-Governor.*



*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 16th August, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd August, 1876.

The undersigned has the honour to report, that by despatch received by the Secretary of State on the 17th August, 1875, the Lieutenant-Governor of the province of Manitoba transmitted copies of some of the more important statutes of the then last session of the legislature of Manitoba.

Upon these the undersigned has the honour to recommend that your Excellency do not exercise the right of disallowance of the statutes undermentioned, that is to say : Chapters 7, 8, 10, 11, 13 to 17, 19.

The undersigned has the honour further to report upon,  
Chapter 5. "An Act respecting the Administration of Justice."

With regard to this Act, Lieutenant-Governor Morris calls attention to the clauses 58 to 61 which he thinks are *ultra vires* of the powers of a local legislature, and trench on the powers of the Dominion.

He states that the bill was prepared by the chief justice, and that he (the Lieutenant-Governor) called the attention of the ministry and the chief justice to his objection at the time, but the clauses were retained.

As there was much of value in the bill, he did not think it advisable to reserve it.

Sections 58 to 61, both inclusive, legislate as to the case of any person being in insolvent circumstances or unable to pay his debts, or on the eve of insolvency, giving a preference or priority under such circumstances, and of the fraudulent departing of property.

The undersigned is of opinion that these sections entrench on the subject of insolvency, and are, therefore, not within the legislative competency of the local legislature.

Provision is made by the Parliament of Canada in the Insolvent Act of 1875, 38th Vic., chap. 16, secs. 130 to 143, both inclusive, which provides very fully for the class of cases with which the Act of Manitoba has incorrectly dealt.

As to sec. 60 of the Act of Manitoba in question, which provides a punishment for the fraudulent destruction or mutilation, or false entry in books of account, with intent to defraud creditors ; that savours of criminal law, and is dealt with by the Parliament of Canada in the Insolvent Act, 1875, section 140.

The undersigned is of opinion that this section, both on account of its being on the subject of insolvency, and forming a portion of the criminal law, is not within the competency of a local legislature.

The undersigned concurs in the opinion of the Lieutenant-Governor, that there is much of value otherwise in the Act, and he is averse, therefore, to recommend that the Act should be disallowed.

He recommends, therefore, that the attention of the Lieutenant-Governor should be called to the objectionable features of the Act, in the hope that his government will take the necessary steps during the ensuing session to repeal the clauses referred to, that is to say, Nos. 58 and 61, both inclusive ; and that in this view the right of disallowance of this Act be not exercised.

Chapter 6. "An Act respecting Grand Jurors."

The undersigned has some doubt whether the subject of jurors is not a matter of criminal law and procedure, and, therefore, within the jurisdiction of the Parliament of Canada.

This Act of Manitoba, has a provision that no person competent to serve as a grand juror, shall be exempted from serving by reason of his being a justice of the peace.

By the Act of Canada 32 and 33 Vic., chap. 29 (Criminal Procedure), sec. 44, it is provided that every person qualified as a grand or petty juror in criminal cases, according to the laws then in force in any province, should be held to be duly qualified to serve as such juror in that province, &c. If there be any irregularity in the Act of Manitoba, it is cured by the Act of Canada above alluded to.

The undersigned recommends, therefore, that your Excellency do not exercise the right of disallowance of this last-mentioned Act.

Chapter 9. "An Act respecting the qualification of Justices of the Peace."

The undersigned has the honour to report, that by section 16 of this Act, it is provided, that, "if the statement in any oath or in any declaration under oath, taken or made in pursuance of the requirements of this Act, be false to the knowledge of the person making the same, such person shall be liable to a fine of \$250, or six months, imprisonment in the common jail in default of payment."

The undersigned is of opinion that this is in effect perjury, and a breach of criminal law, and is, therefore, not within the competency of a local legislature.

The case is, indeed, provided for by the Act of Canada, 1869, 32 and 33 Victoria, chapter 23, section 2.

The undersigned, therefore, recommends that the attention of the Lieutenant-Governor be called to this section, with a view to the repeal of the same, and that in this view the right of disallowance of this last-mentioned Act be not exercised.

R. W. SCOTT,

*Acting Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 16th August, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th August, 1876.

Upon an Act passed by the legislature of the province of Manitoba, and assented to on the 14th May, 1875, being:—

Chap. 18, intituled: An Act respecting Estreats, Fines, Penalties and Forfeitures, the undersigned has the honour to report.

That the first section provides that "all fines, issues, amerciaments, penalties and forfeited recognizances, set, imposed, lost or forfeited, by or before any court in the province of Manitoba, of superior or inferior jurisdiction, or by or before any magistrate, mayor, coroner or justice of the peace, or by the mere operation of any law or statute in force heretofore, now or hereafter in the said province, shall be paid over to the provincial treasury of the said province by the person collecting the same, and shall form part of the annual revenue of the said province."

The second and following clauses provide for the proceeding in case of the default of the recognizances, and how the same are to be estreated and put in judgment. It also provides in the 11th clause that the sheriff shall, without delay, pay over to the provincial treasury of Manitoba all moneys by him made or collected under this Act.

The 12th clause provides that with respect to any fine, issue, amerciamment, penalty or forfeiture, which is now or may hereafter become due and payable to the Crown within the province of Manitoba by the mere operation of any law or statute in force in the said province, heretofore, now or hereafter, it shall be sufficient for the clerk of the Crown and peace to take the necessary proceeding to estreat as therein provided.

The undersigned has grave doubts whether the subject on which this statute treats is not, as to the whole, a matter of criminal procedure, and, therefore, not within the competence of a local legislature.

Without dwelling, however, upon that point, he observes that a definite provision is made by the first clause, that all fines, penalties, &c., set, imposed, lost or forfeited in the province of Manitoba, or by the mere operation of any law or statute in force heretofore, now or hereafter, shall be paid over to the provincial treasurer, and shall form part of the annual revenue of the province.

By the 11th clause the sheriff is to pay over all moneys received by him in such respect to the treasurer of Manitoba; and by the 12th clause provision is made as to such fines, penalties or forfeitures, as may now or hereafter become due and payable to



the Crown within Manitoba, by the mere operation of any law or statute in force in the said province.

This provision deals, therefore, with many matters which come within the exclusive legislative competence of the parliament of Canada.

There are many fines, penalties or forfeitures in respect of which parliament has legislated and made provision, both as to the mode of recovery and the appropriation thereof, such for instance as in the Inland Revenue and Customs Act.

In addition, also, as to pecuniary penalties and forfeitures, provision is further made as to their recovery and appropriation by the "Interpretation Act, 1867," 31st Vic., chap. 1, sec. 6, subsec. 22.

The undersigned is, therefore, of opinion that the Act in question deals with matters beyond the competence of a local legislature, and he recommends, therefore, that the Act passed by the legislature of Manitoba in the 38th year of her Majesty's reign, chap. 18, intitled: "An Act respecting Estreats, Fines, Penalties and Forfeitures," be disallowed.

R. W. SCOTT,  
*Acting Minister of Justice.*

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 26th day of August, 1876, Vol. X., No. 9, page 217.*

*Report of the Honourable the Minister of Justice, approved by his Excellency the Governor General in Council on the 7th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th October, 1876.

With reference to the statutes of Manitoba, passed in the first session of the second parliament, 38 Victoria, 1875, the undersigned begs to report as follows:—

Chapters 1, 3, 4, 23, 24, 25, 28, 29, 32, 34, 36, 38, 39, 40, 42, 43, 44, 45, 47, 48, 49, 51 and 52, do not appear to call for observation or for the exercise of the power of disallowance.

Chapter 2. "An Act respecting the election of Members of the Legislative Assembly of the Province of Manitoba." The heading of the first part is "Parliamentary Electors." The same phrase occurs before the 12th section, and in the latter part of the 13th section, which provides that the list thereby established shall be the list of parliamentary electors for the electoral division. With reference to this phrase the undersigned refers to the report of the Minister of Justice, of 1st July, 1868, upon chapter 30 of 31st Victoria of the statutes of Ontario, in which report there is contained, with reference to the same phrase, the following observations:—

"The 41st section of the Union Act provides that all the laws of the several provinces relating to parliamentary elections, in force at the time of the union, shall remain in force until the parliament of Canada otherwise provides.

"If the clause in question is intended merely to apply to elections for the legislative assembly of Ontario, it is inaccurate in expression.

"To avoid confusion, the Union Act confines the name of parliament to the general legislature, the provincial legislative bodies are styled uniformly as legislatures.

"The undersigned recommends that the attention of the government of Ontario be called to this section, and suggests that the same should be amended so as to limit it expressly to elections for the legislature of Ontario."

The undersigned recommends that the attention of the Lieutenant-Governor of Manitoba should be called to the use of this phrase, with a suggestion that it should be amended so as to limit it expressly to electors for the legislative assembly of Manitoba.

Section 32. It may be questionable whether some falsifications of the electors' lists may not be crimes within the meaning of the law of Canada, in which it would seem *ultra vires* of the local legislature to deal with them.



In sections 33 and 34, and in other parts of the Act, is used the phrase "parliamentary electors" already referred to.

Section 166 amongst other things embraces a penalty for the offence of forgery, and is so far *ultra vires*.

Subsection 3 imposes a penalty for the offence of destroying, taking, opening or manipulating, without authority, any ballot box or parcel of papers used or to be used at an election, or attempting to commit such an offence. These may be criminal acts within the meaning of the criminal law of Canada, the Act relating to malicious injury to property, 32 and 33 Victoria, chap. 22, sec. 59.

Sections 185 and 205 may also to some extent touch upon the criminal law.

Sections 206 provides punishment for the offence of inducing any one to take a false oath. This is clearly subornation of perjury, a criminal offence under the law of Canada, and provided for by 32 and 33 Vic., chapter 23, and the legislation seems *ultra vires*.

Section 235. Some of the provisions in this section seem also to trench upon the criminal law.

Section 237 provides that every punishment, by way of fine or imprisonment, imposed by the Act shall be in addition to any punishment that may be inflicted by the parliament of Canada for the same offence. This section, in terms, acknowledges that some, at any rate, of the acts which are to be punished under the law, are crimes within the criminal law, and that the legislation is, therefore, *ultra vires*.

The undersigned observes that prior legislation of the other provinces has, although objectionable in some of the particulars to which he has called attention, been suffered to pass without observation, and, upon the whole, he does not recommend the disallowance of this Act. There is, however, a growing tendency towards the invasion of the criminal law by local legislatures which is obviously objectionable, and he suggests that the attention of the Lieutenant-Governor should be called to the Act now under consideration, with a request that he would move his government to recommend to the legislature a measure repealing such sections as trench upon the criminal law.

Chapter 20. "An Act respecting the storage of Gunpowder in and near the incorporated Towns and Cities in the province." This Act involves some questions which have been raised with reference to other Acts left to their operation, and the undersigned recommends that the same course should be pursued with reference to this Act.

Chapter 21. "An Act respecting Building Societies." The second section of this Act provides that: "Every such society may receive from any member any sum of money by way of bonus on any share for the privilege of receiving the same in advance, prior to its being realized, besides interest for the share so received or any part thereof, without being held thereby to contravene any law relating to usury."

Section 11 authorizes loans or advances to members or others, and the receipt of bonuses, besides interest, without being subject, on account thereof, to any forfeiture or penalty, and is open to the same objection.

Section 16. This section provides that if any person having in his possession, by virtue of any office to which he is appointed by a society, any of its moneys or effects, becomes bankrupt or insolvent, his assigns or other persons having the legal right, shall, within fifteen days after demand, deliver over all things belonging to the society, and pay out of the estate's assets or effects of the person, all sums of money remaining due, which such person received by virtue of his office before any of his other debts are paid or satisfied, and that all his assets, estates and effects shall be bound to the payment and discharge thereof accordingly, except that the same shall not be paid or satisfied to the prejudice of mortgages or privileges on real estate, or of heirs or privileges on personal estate only, duly executed previous to the appointment of such officer. This section appears to affect the law of insolvency, and is on this ground objectionable.

Section 17 provides that all property, etc., of the society shall, for all purposes of action or suit, civil or criminal, be taken to be the property of the society, and that the society may, by its name, bring criminal prosecution. This action appears objectionable, as trenching upon criminal law.

Section 18 makes the secretary of the society a competent witness in all actions, suits and prosecutions to which the society is a party, and is objectionable on the same ground as the former section.

The undersigned recommends that the attention of the Lieutenant-Governor of Manitoba should be called to these observations, with a view to the repeal of the objectionable clauses.

Chapter 22, section 26, appears wide enough to empower the Lieutenant-Governor to authorize the removal from the province of a criminal confined in jail for crime, or sent after conviction to an asylum for the insane, and so is objectionable, as trenching on the criminal law. The undersigned recommends that the attention of the Lieutenant-Governor should be directed to this clause, with a view to its amendment.

Chapter 27. "An Act to further amend the Act to establish a system of Education in this Province."

Section 11 provides that if a school trustee or other person knowingly signs a false report, or if a teacher keeps a false school register, or makes a return, with a view of obtaining more than a just proportion of school moneys, he shall forfeit \$20 and be liable to imprisonment in the common jail. This seems rather to trench upon the criminal law, as being an attempt to commit the crime of obtaining money under false pretenses, and would, of course, apply to a case in which that crime had been actually committed. Similar provision has, however, been permitted to pass without objection in the case of another province, and the undersigned, under the circumstances, recommends that the attention of the Lieutenant-Governor should be called to the section, with a view to its amendment.

Chapter 30. "An Act to amend the Act of 1873, to regulate the sale and traffic of Intoxicating Liquors."

Some of the provisions of this statute may be open to the objections which have been taken in the case of an Act upon the same subject, passed by the legislature of Ontario. These objections are still *sub judice*, and the Act referred to having been left to its operation, the undersigned recommends that a similar course be taken in this case.

Chapter 31. "An Act respecting Municipalities." Section 20 exempts certain classes of real estate from municipal taxation. Amongst them is (subsection 1) "real estate vested in or held in trust for Her Majesty, or for the public uses of the province;" and (subsection 5), "the following property of the Canadian Pacific Railway Company, the buildings, except the lands granted or to be granted by the government in aid of the said railway." It is presumed that this clause is not intended to apply to lands for the purpose of the grant in aid of the construction of the work, and not yet granted. It would be objectionable to permit the taxation of the lands between the period of their appropriation and their grant to the company.

Section 39. Subsection 12, appears to admit the transfer upon a tax sale to the purchaser, of the rights of the holder or other persons, in lands sold for taxes before the issuing of letters patent from the Crown granting the same. This would not be objectionable in cases in which the rights of the holder or other persons are recognized by the Crown to be transferable; but if it is intended to extend to cases in which no right to transfer is recognized by the Crown, it might be objectionable. It is not presumed that such can be the intention, and, upon inquiry from the Minister of the Interior, it appears that the only possible evil which can arise is in cases of homestead entries, and as to these the law regulating them provides that all assignments and transfers are null and void, and are to be deemed evidence of the abandonment of the right. It appears to the undersigned that the Crown can, notwithstanding the local Act, resume possessions of any land of which possession



may be taken by a purchaser under colour of this clause, and he recommends that it should be left to its operation.

Chapter 35. "An Act to amend the Registry Act." This Act recites that the 43rd section of the Act 36th Vic., chap. 18, does not express the true meaning of the legislature in that behalf, and that it is expedient to amend it. The 43rd section in question provides that "after any grant from the Crown of lands in Manitoba, and letters patent issued therefor, every instrument affecting the lands, or any part thereof, comprised in such grant, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless such instrument is registered in the manner herein directed, before the registering of the instrument under which such subsequent purchaser or mortgagee may claim." The amending clause provides that any instrument mentioned in the 17th clause of the original Act, registered in pursuance of the Act affecting any lands, whether there has been any grant from the Crown of such lands or not, shall be adjudged fraudulent and void against any subsequent purchaser, unless registered as in the Act provided. This appears to be a direct interference with the devolution of title to lands before patents are issued. When the lands are the property of the Crown in the province, the legislation would be within the competence of the local legislature, and might be beneficial; but the position of Manitoba is, in this respect, exceptional. The lands, until patents are issued, are the property of Canada, and the provisions as to assignments, &c., of unpatented lands, ought to be made by the Canadian parliament. The undersigned has called the attention of the Minister of the Interior to the question of the practical operation of the Act, and the minister is of opinion that, in the case of persons owning and transferring rights in unpatented lands, a provision such as that in the local Act, would be required for the protection of the purchaser; and he points out that a person so purchasing, after registering his assignment, would, he presumes, send the same forward to his department, in order that the patent, if in time, might be issued in his name.

The Act contains many other provisions, and its disallowance would probably be productive of confusion. Since its objects are such as the ministers would be prepared to recommend to the Canadian Parliament, the undersigned recommends that it should be left to its operation, the attention of the Lieutenant-Governor being called to the difficulty, with the suggestion that the clause should be repealed, and an intimation that Parliament would be invited to legislate on the subject.

Chapter 41. "An Act respecting County Municipalities." Some of the provisions of section 11 may be open to question as being *ultra vires*; but similar legislation having already taken place in another province, the undersigned does not recommend any interference.

Section 24, subsection 1, requires persons challenged at the polls to make a declaration. Subsection 3 provides punishment for a false declaration so made. This seems to come within the criminal law, whereby declarations required by statute, if false, are punishable as forgery. The undersigned recommends that this section be called to the attention of the Lieutenant-Governor, with a view to its amendment.

Section 172, subsection 12. This section is subject to the same objections which have been already made with reference to chapter 31, section 39, subsection 12.

Chapter 46. "An Act to incorporate the Manitoba Western Railway Company." It is to be observed that the local legislature has no power to authorize the company to enter, without the assent of the Crown, upon lands vested in the Crown. The Act does not, however, expressly purport to give such authority, and it seems unnecessary to do more than make this observation.

Chapter 50. "An Act relative to the City of Winnipeg." To section 14 of this Act, several observations made upon chapter 2 are applicable.

EDWARD BLAKE,  
*Minister of Justice.*



*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 7th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 7th October, 1876.

Statutes of Manitoba passed in the year 1875, 38th Victoria :—

Chapter 33. "An Act to afford facilities for the construction of a Bridge over the Assiniboine River, between the City of Winnipeg and St. Boniface West."

This Act provides for the granting of a license for the construction of the proposed bridge, the license to extend over a period not exceeding twenty years.

The third section provides that the Lieutenant-Governor may require the bridge to be constructed with a draw therein, so as to permit the passage of steam and other vessels in the River Assiniboine.

The Act thus admits that the river is navigable, and that, under its provisions, navigation may be obstructed.

In response to an application by the undersigned, the Minister of Public Works reports that the project has been so far entertained for making the Assiniboine a channel for reaching Manitoba Lake and the Saskatchewan River, as to send an engineer to examine the country between the said lake and the Assiniboine; that the project is quite feasible, and could be accomplished at very little cost; and that if accomplished, continuous navigation would be had by that route to all points on Red River and Lake Winnipeg. The minister is disposed to advise that under these circumstances the Act should be disallowed, and that any authority which may be required for bridging the Assiniboine at any point east of Portage la Prairie, should be obtained from the Dominion legislature.

Upon communication with the Lieutenant-Governor of Manitoba, it has been ascertained that no action has been taken by the government of that province upon the authority conferred by the Act.

The undersigned recommends that the Act in question be disallowed.

Chapter 37. "An Act to amend Cap. 46, Vic. 37, intituled: 'The Half-breed Land Grant Protection Act.'"

The Act by this statute amended was reserved, and the assent was given by his Excellency in Council, in pursuance of a report of the then Minister of Justice, pointing out that its operation was, on the whole, beneficial to the half-breeds. The present Act modifies the provisions of the former one in some material particulars; but not to the advantage of the half-breeds.

It provides that when a half-breed, having sold his interest, and received therefor a consideration, shall return or tender to the purchaser the full consideration and the purchaser's expenses with interest at 12 per cent per annum, within three calendar months from the passing of the Act, the agreement shall not be binding; otherwise the bargain, if in writing, shall be valid, and the half-breed shall assign the granted lands within three months after the receipt of the patent from the Crown. It repeals the second section of the former Act. It provides that notice of the passing of the Act shall be given in the *Manitoba Gazette* for three months after its being assented to by the Crown.

The undersigned referred to the Minister of the Interior for his view of this Act, and his report is as follows :—

"The undersigned having failed to find in Ottawa any evidence of compliance with the 3rd section of the Act, referred for information on this point to the Hon. Mr. Royal, Attorney-General of Manitoba, now here, who states that no notice of the passage of the Act in question was given, and that the same has not been considered as in force in the province.

"This notice was evidently intended for the information of the half-breeds who may have sold their claims in order that they might redeem them if so inclined, in manner as pointed out in section 1 of the Act; but it was not given, Mr. Royal says, in consequence of a doubt on the part of himself and his colleagues, whether the Act would be allowed by the Governor General.

"Under the circumstances the undersigned recommends that the Act be disallowed, especially as in his opinion the original Act 37 Vic., chap. 46, alluded to, afforded all necessary protection to the purchase of half-breed land rights."

Under the circumstances stated in this report, the undersigned concurs in the recommendation of the Minister of the Interior, that the Act should be disallowed.

Chapter 26. "An Act to amend the Act intituled: 'An Act for the protection of the Wood Lands of the Province.'"

This Act makes it an offence punishable by a penalty not exceeding \$200, and in default of payment imprisonment not exceeding two months, to burn or set fire to any trees or timber on any lands in the province. The provisions being much more rigorous than those which had been enacted in the province of Quebec, or previously in the province of Manitoba, the undersigned caused inquiries to be made of the Minister of Public Works and of the Minister of the Interior as to their view of the operation of the statute with reference to the Dominion public works in the province, and to the settlement of Dominion lands in the province.

The Minister of Public Works reports that most of the Pacific Railway proper, within the boundary of Manitoba, is on prairie land; that the woodland portion is already cleared and burned; and that it, therefore, does not seem necessary to object to the Act on account of any inconvenience which might result to contractors or others on the railway line, and that the measure cannot interfere with any other works now in progress or likely to be undertaken.

The Minister of the Interior reports that if enforced by the province the law would prevent entirely the clearing up and bringing into cultivation any land covered with timber to market, that there are, perhaps, few, if any, parts of the province where heavy timber might not be sold more or less to advantage, but the effect of the local Act proposed would be to prevent, under any circumstances, the burning on the land of refuse timber or even perhaps of brush.

No legal question is involved, and the undersigned submits these opinions for the consideration of Council as to the course to be taken with reference to this Act.

EDWARD BLAKE,  
*Minister of Justice.*

*Orders in Council disallowing chapters 33 and 37, published in the Canada Gazette on the 14th day of October, 1875, Vol. X., No. 16, pages 487-484.*

## MANITOBA, 39TH VICTORIA, 1876.

## 2ND SESSION—2ND PARLIAMENT.

*Lieutenant-Governor Morris to the Hon. the Secretary of State of Canada.*

GOVERNMENT HOUSE, FORT GARRY, MAN., 12th February, 1876.

SIR,—I have the honour to inform you that an Act, having for its object the abolition of the upper House, has been passed by both branches of the legislature, and was assented to by me on the 4th instant.

The first suggestion of this measure was made by yourself, in your despatch of the 8th May, 1874, addressed to the Honourable Thomas Howard and Joseph Royal, delegates from the Executive Council to confer with the Privy Council.

Subsequently, on the formation of a new government by the Honourable M. A. Girard, in July, 1874, it was announced by him to the legislative assembly, when explaining the policy of the new government, that they designed to abolish the upper chamber.

A bill was thereafter introduced, with that end in view, in 1874, and was adopted by the assembly without a division, but was rejected by the upper House by a vote of four to three.

Shortly prior to the general election of 1875, the Honourable R. A. Davis was called upon to form a government, on the resignation of the Honourable Mr. Girard, and in his address to the electors of the city of Winnipeg, published in the newspapers of the province, an announcement of his determination to carry out the abolition of the upper chamber was made, while the general election was in progress.

The measure was again introduced during the first session of the second legislature, in 1875, but was again defeated by a vote of the legislative council of four to three.

Thus the matter remained, until the recent visit of Honourable Messrs. Davis and Royal to Ottawa, to confer with the Privy Council respecting the financial position of the province.

Amongst the results of that conference was the following suggestion made by the Honourable Edward Blake, Minister of Justice, in a memorandum dated the 25th of October, 1875, submitted to and adopted by the Privy Council on the 26th October, 1875, viz. :—

“Even if more radical changes be made, it appears to the sub-committee that the present form of government should be simplified and cheapened by the abolition of the second chamber, and the material reduction of the other expenses of government and legislation, and that (in case it is proposed to expend a sum larger than that which may be available from the Dominion) provision should be made for supplementing the revenue from local resources to the necessary extent, so as to avoid future deficits.”

This suggestion was accepted by the Honourable Messrs. Davis and Royal, by a letter dated 27th October, 1875, and in pursuance of the understanding thus arrived at, a measure to abolish the legislative council was introduced in the legislative assembly at its recent session.

The second reading was carried on the following division :—

*Yeas.*—Messrs. Bird, Bourke, Brown, Cornish, Chenier, Cowan, Davis, Dick, Girard, Gunn, Lemay, Luxton, Lepine, McKay, Murray, McKenzie, Norquay, Nolin, Royal, Taylor.—20.

*Nays.*—Mr. Sutherland.—1.

The Honourable Mr. Howard was necessarily absent, but would have voted yea. Mr. Martin was absent from the province, and the speaker was in the chair, the whole House being thus accounted for.



On reaching the upper House the Honourable Dr. O'Donnell moved the rejection of the bill at its third reading, with the following result :—

*Yeas.*—Honourable Messrs. O'Donnell, Hamelin, Dauphinais.—3.

*Nays.*—Honourable Messrs. Inkster, McKay, Gunn, Ogletree.—4.

The bill was thereafter passed, the Honourable Dr. O'Donnell entering a protest on the Journals.

Having thus narrated the course taken during the past two years in relation to this Act, I now proceed to make some observations respecting it.

1. I have felt much embarrassment in dealing with its sanction or reservation, as I am entirely without instructions as to my duty in assenting to or reserving bills. Apart from my personal opinion, which is, in view of practical experience of the past sessions, that the time had not yet fully come when the upper chamber could be prudently abolished, I had a legal difficulty to consider, which I will hereafter state.

But before passing to this, I would remark, that we have in the assembly no men of parliamentary training and experience; that the population of the province is mixed, embracing the three elements of: 1stly, English half-breeds and Selkirk settlers; 2ndly, French half-breeds; and 3rdly, the new settlers from Ontario, all of whose views and opinions are diverse. That the government has no attorney-general, and that there is danger of hasty and crude legislation being rapidly passed through a single chamber (constituted as that of Manitoba) which may lead to embarrassment and difficulty. I am of opinion, therefore, that I should be instructed hereafter to reserve for the assent of his Excellency the Governor General, all bills that may involve any change of the constitution created by the Manitoba Act of 1870, and that I should also receive instructions as to any other class of bills which, in the judgment of His Excellency in Council should be reserved. Hitherto, I have acted to the best of my judgment, conferring with my council, and endeavouring to examine the legislation, in the light of the British North America Act, with regard to the local and Dominion powers.

2. I now come to the legal question, which I had to consider, and with regard to which, not having come to any positive conclusion, and regarding the report of the Minister of Justice, adopted by the Privy Council, as an expression of their opinion on the general merits of the measure, I believed that my best course was to accede to the wishes of the Local and Dominion governments, and assent to the bill, respecting, however, my obligation to express, as I am now doing, my personal views with respect to it, and requesting the Privy Council and Minister of Justice to consider the question, when deciding whether the Act shall be left to its operation.

Had I had to deal with the British North America Act alone, which, by the Manitoba Act, section 2, is incorporated therewith, I should have experienced no difficulty as to the constitutionality of an Act to abolish the upper House. As the 92nd section of the British North America Act, in defining the powers of the provincial legislatures, expressly confers upon the legislature in each province "the exclusive right to make laws" in relation to the amendment, from time to time, notwithstanding anything in this Act, of the constitution of the province, except as regards the office of Lieutenant-Governor.

The Manitoba Act of 1870 was, however, confirmed by the Imperial Act of 1871, 34 and 35 Vic., cap. 28, the 6th clause of which is in the following words :—

"Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament, in so far as it relates to the province of Manitoba, or of any other Act hereafter establishing new provinces in the said Dominion, subject always to the right of the legislature of the province of Manitoba to alter, from time to time, the provisions of any law respecting the qualifications of electors and members of the legislative assembly, and to make laws respecting elections in the said province."

The exception mentioned in this section is the power of enlargement or diminution of a province with its consent.

The object of the section was evidently to place the constitution of Manitoba (it having been enacted by a Dominion Act) in the same position as the constitutions conferred on the other provinces, by the Imperial Confederation Act, so that it could only be altered by Imperial legislation, and not by Canadian.

Hence, the positive declaration that the Parliament of Canada cannot alter the Manitoba Act, except in the case of the enlargement or diminution of the province; following this declaration is, however, a reservation of powers to the Manitoba legislature, in the following words:—

“Subject always to the right of the legislature of the province of Manitoba to alter from time to time the provisions of any laws respecting the qualification of electors and members of the legislative assembly, and to make laws respecting elections in the said province.”

In view of this exceptional declaration of power in the Manitoba legislature, to alter the Manitoba Act, the question of interpretation which arises is this:

Does the section, above cited, granting and specifying a particular power to and in the legislature of Manitoba, modify and exclude the general power to alter the constitution contained in the 92nd section of the British North America Act? It may be asked if the British North America Act confers the general authority to deal therewith, why was the affirmative grant of the special powers necessary to be inserted in the Act of 1871?

The other aspect of the case would be to hold that the Acts of 1867 and 1871 are to be read as one, and that the conferring of the special authority above referred to, was a mere enumeration of the specified powers thereby conferred, and does not exclude the general power granted by section 92 of the Act of 1867.

The question is an interesting and important one, and being without the means of access to a legal library, I have not had the opportunity of fully studying it, but submit the views that have presented themselves to me, for the maturer consideration of the Minister of Justice, when, in the course of his official duties, he is called upon to report to the Privy Council whether the Act shall be left to its operation or not.

In order to facilitate an early disposal of the matters, I inclose a duly certified copy of the Act, and shall be glad to be advised of the decision of the Privy Council with regard thereto.

I have, &c.,

ALEX. MORRIS,  
*Lieutenant-Governor.*

*Lieutenant-Governor Morris to the Hon. the Secretary of State of Canada.*

GOVERNMENT HOUSE, FORT GARRY, MAN., 15th February, 1876.

SIR,—I have the honour to inclose herewith, for the information of the Privy Council, a certified copy of an Act of the legislature of Manitoba, respecting the practice of the courts, which I assented to on the 4th inst.

I am requested by the Executive Council of Manitoba to call your attention to the 14th section of the said Act, which is designed to remedy difficulties, which have arisen as to the holding of the county courts.

Before the arrival of the chief justice in Manitoba, an arrangement was come to between Judges McKeagney and Betournay, with my approval, that the two county courts in the French-speaking counties of Provencher and Marquette East, should be held by Judge Betournay.

Of late, misunderstandings have arisen between the judges, as to the holding of the various county courts.

They do not confer together and arrange who should hold them.

As I failed in arriving at any arrangement otherwise, the council decided on regulating the matter by legislation, and hence the clause in question was adopted.

As, however, the appointing power, as to the judges, is in the Governor General in Council, and as possibly the directing them to hold particular courts might be held to interfere with that power, the exercise of the authority of direction, was made subject to the approval thereof by the Privy Council.



I have, therefore, to request that an Order in Council may be passed without delay, approving of the Executive Council directing which of the judges shall hold the approaching and subsequent county courts, in order that difficulties may be avoided, which are not conducive to the public advantage.

I have, &c.,

ALEX. MORRIS,  
*Lieutenant-Governor.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 20th April, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th April, 1876.

The undersigned has had under consideration the Act of the legislature of Manitoba, being chapter 28 of the statutes passed on the 4th of February, 1876, intituled: "An Act to diminish the expenditure of the province of Manitoba in certain respects," in connection with the despatch of the Lieutenant-Governor of Manitoba of 12th February. The Lieutenant-Governor calls attention to two points with reference to this Act.

The first is a question of policy, upon which the undersigned does not feel called upon to offer any remarks, in his capacity as Minister of Justice, it being from the Privy Council, and upon which in effect the council has already expressed its opinion, in several communications with the Lieutenant-Governor of the province.

Upon the second, which is a legal question, the undersigned has to observe that the suggestion of the minute in council of the 26th October, 1875, did not involve the proposition that the second chamber of Manitoba could be abolished by the legislature. The suggestion simply was, that it should be abolished the question by what authority that result could be obtained, not being the subject of consideration at the time.

The undersigned agrees with the view taken in the despatch, that under the Manitoba Act, 1870, 33 Vic., chap. 3, and those provisions by the British North America Act incorporated therewith, it was competent to the provincial legislature to alter its constitution by the abolition of the legislative council.

The question raised in the despatch is, whether by the operation of the Imperial Act, 34-35 Vic., cap. 28, sec. 6, the constitutional powers of the legislature of Manitoba are limited in this particular.

It is to be observed that the purpose of the enacting part of this section obviously was not to limit these powers, but to establish their existence on a basis unalterable by the Parliament of Canada, with the view of placing the constitutional rights of the people of Manitoba on the same footing as those of the people of the other provinces of Canada.

The section in this spirit enacts that it shall not be competent for the Parliament of Canada to alter any of the provisions of the Manitoba Act, but it proceeds as follows:—

"Subject always to the right of the legislature of the province of Manitoba to alter, from time to time, the provisions of any law respecting the qualification of electors and members of the legislative assembly, and to make laws respecting elections in the said province."

This addition was obviously unnecessary, as no rights of the legislature of Manitoba were affected by the preceding part of the section. Its existence, however, certainly raises a serious question, and, upon the whole, the undersigned thinks it the better opinion that the constitutional rights of the people of Manitoba are not taken away by the words quoted. At any rate, very much is to be said in favour of this view, and the undersigned feels that it would be contrary to the spirit in which the power of disallowance has been exercised, to interfere with the operation of this Act.

It will be for the legislature of Manitoba, if doubts should be raised as to its validity, to move the proper authorities for such legislation as shall remove those doubts; and he recommends that the Act should be left to its operation.



The undersigned abstains, in this report, from dealing with the general observations made in the despatch upon the subject of the instructions to the Lieutenant-Governor, thinking it more convenient to make this portion of the despatch the subject of a separate report.

Upon the Act of the province of Manitoba, passed at its session of 1876, intituled: "An Act respecting the registration of mortgages to the Crown for advances of provisions and seed grain:"

The undersigned recommends that this Act be left to its operation.

The undersigned further recommends that a copy of the said last-mentioned Act, and the despatch accompanying it, be transmitted to the Minister of Agriculture, for his information.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 20th April, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th April, 1876.

Upon the Act of the legislature of Manitoba passed at the session of 1876, intituled: "An Act respecting the practice in the courts," and the despatch of the Lieutenant-Governor of the 15th February, 1876, inclosing the said Act, the undersigned begs to report that the power of disallowance should not be exercised in respect of the said Act.

He begs further to report that, in his opinion, the more convenient mode of working, in the first instance, the 14th section of the said Act, so far as the government of Canada is concerned therewith, would be by the Privy Council approving the order, which should be made by the Lieutenant-Governor in Council, determining which of the judges of the Court of Queen's Bench, should hold the county court of any county in the province, and he recommends that this view be communicated to the Lieutenant-Governor of Manitoba.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 25th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th October, 1876.

Upon the statutes of the legislature of Manitoba, 39 Victoria (1876) the undersigned begs to report as follows, viz. :—

The undersigned does not recommend that the power of disallowance be exercised with reference to the following Acts:

Chapters 2, 4, 6, 13 to 29 both inclusive.

With reference to chapter 1, "An Act to amend the School Acts of Manitoba, so as to meet the special requirements of incorporated Cities and Towns."

Section 35.—The provision in this section with reference to indecent behaviour, may trench upon the criminal law. This, however, is the same as contained in an Act of another provincial legislature not objected to, and the undersigned does not recommend any interference with the clause.

Chapter 3—"An Act respecting jurors and juries."

Many of the provisions of this Act appear to trench upon criminal procedure, but it is to be observed that an Act substantially the same, passed by the legislature of Quebec in the year 1869, was left to its operation, being reported as free from objection

and that the Criminal Procedure Act of Canada, 1869, section 44, passed apparently with a view to confirm the provisions of the Quebec Act, is general in its terms, and removes many of the doubts which might otherwise be entertained as to the Act in question. However, the latter contains certain provisions with reference to the selection of French and English speaking jurors, upon which subject special provision is made by the 40th section of the Canada Criminal Procedure Act for the province of Quebec only, and in this, as well as in some other particulars, it may be proper to consider whether confirmatory legislation should not be had.

Chapter 5.—“An Act to provide for the appointment of a Fire Commissioner for the cities and towns in Manitoba, and to define his powers and duties.”

Section 9 appears to trench upon criminal procedure, and the attention of the Lieutenant-Governor should be called to the difficulty.

Chapter 7.—“An Act to make better provision for the securing of order at municipal elections and for other purposes.”

Sections 1, 2, 4 and 5 appear to trench upon criminal law and procedure, but similar provisions have been left to their operation in other cases, and the undersigned merely recommends that the attention of the Lieutenant-Governor should be called to them.

Chapter 8.—“An Act to provide for the incorporation of Mutual Fire Insurance Companies in the Province of Manitoba.”

This Act does not, as clearly as might be wished in terms, confine the business within the range permissible to provincial companies, and, though the implication from the various provisions is, perhaps, sufficiently strong, yet it might be better that express language should be used limiting the business in a provincial business.

Section 71.—This section applies the previous section to every fire insurance company, by whatever authority incorporated, and now, or at any time hereafter, transacting fire insurance business in the province.

The previous section requires companies affected by it, to give very full returns of various matters affecting its business, and, further, when required to make prompt and explicit answer in reply to any inquiries in relation to its transactions which may be required by the Lieutenant-Governor in Council.

The undersigned submits for the consideration of council how far it is proper that the companies incorporated under the authority of the legislature of Canada, should be subject to these regulations; and he recommends that the attention of the Lieutenant-Governor should be called to this point.

Section 72. This appears objectionable, as being in effect a provision for a declaration of the insolvency of the company and for the winding-up of its affairs. The attention of the Lieutenant-Governor should be directed to the Act, with a view to its amendment during the ensuing session, before the time for disallowance is reached.

Chapter 9.—“An Act respecting the Public Works of Manitoba.”

Section 8 places under the provincial Department of Public Works, amongst other things, works for improving the navigation of any water, and other similar subjects. It excludes, however, such as may be under the control of the Dominion Government, and this phrase, though not strictly accurate, probably obviates the necessity of objection to the clause.

Section 31 provides that, whenever it is ascertained that there exists or has been constructed across any river, any boom, mill-dam, embankment or obstruction, obstructing the navigation of the river, the minister shall have power to stop the obstruction.

It would be well that this power should be so limited, as not to trench upon the authority of Canada.

The undersigned suggests that the attention of the Lieutenant-Governor should be called to the section in this view.

Chapter 10.—“An Act concerning the opening of certain Public Roads.”

The undersigned defers for the present his report on this Act.

Chapter 11.—“An Act respecting the Bureau of Agriculture and Statistics.”

This Act creates a bureau of statistics.

Observation has been made on former occasions upon the infringement by provincial legislation on the subject of statistics, but that infringement having been repeatedly permitted, the undersigned recommends that the same course should be pursued on this occasion.

Chapter 12.—“An Act respecting the Legislative Assembly.”

The undersigned appends a copy of his report upon a similar Act recently passed by the legislature of Ontario, which report is applicable to the statute now under consideration.

EDWARD BLAKE,  
*Minister of Justice.*

*Ontario Statute.*

Chapter 9.—“An Act respecting the Legislative Assembly.”

(For copy of the extract alluded to, see page 146).

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 9th November, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th November, 1876.

With reference to chapter 10 of the Acts of the legislature of Manitoba, 39 Victoria, 1876, intituled: “An Act concerning the opening of certain Public Roads,” the undersigned begs to report that this Act concerns the opening of certain public roads, and provides for the opening of roads between the surveyed townships, and any great highways, or any great rivers.

The undersigned has caused inquiry to be made of the Minister of the Interior, as to whether there is, in his opinion, any objection to leaving this statute to its operation. The opinion of the minister is, that there is no such objection, and the undersigned recommends that the power of disallowance be not exercised.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd May, 1877.*

DEPARTMENT OF JUSTICE, OTTAWA, 7th May, 1877.

Referring to the report of the Minister of Justice, dated 18th October 1876, upon the statutes of the province of Manitoba, 39th Victoria (1876), I beg to report:

That with regard to section 72 of chapter 8, intituled: “An Act to provide for the incorporation of Mutual Fire Insurance Companies in Manitoba,” it was pointed out that such section was objectionable, as being in effect a provision for a declaration of the insolvency of the company, and for the winding-up of its affairs, and it was recommended that the attention of the Lieutenant-Governor should be directed to the Act, with a view to its amendment during the ensuing session, before the time for disallowance was reached. No action having been taken by the legislature of the province with a view to repealing the objectionable clause, the Lieutenant-Governor was communicated with on the 3rd instant, by the Secretary of State, by telegraph, as follows:—

“Referring to letter and inclosures of 27th October last, was seventy-second section of Insurance Act amended as suggested in report of Minister of Justice?”



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"If not, do you propose to address any observation on subject before time for disallowance arrives?"

In reply, the Lieutenant-Governor, on the 5th instant, telegraphed as follows :—  
"Attorney General writes the section seven Insurance Act you cite was overlooked, but will be repealed next session, if Act not disallowed," and in a subsequent telegram from the Lieutenant-Governor, on his attention being called to the fact that the section mentioned in his previous telegram was "seven," he says—

"Section seventy-two was the one referred to."

Relying upon the assurance of the Lieutenant-Governor, I recommend that the power of disallowance be not exercised, but that the Act be left to its operation.

A. J. SMITH,  
*Acting for Minister of Justice.*

## MANITOBA, 40TH [VICTORIA, 1877.

3RD SESSION—2ND PARLIAMENT.

*Lieutenant-Governor Morris to the Secretary of State of Canada.*

GOVERNMENT HOUSE, FORT GARRY, MAN., 11th Feb., 1876.

SIR,—I have the honour to inclose, herewith, a certified copy of a bill passed by the legislature of Manitoba, at its recent session, intituled: "An Act to incorporate the Manitoba Investment Association, Limited," but which I reserved for the signification of the pleasure of his Excellency the Governor General.

My reasons for reserving this bill were, that it seemed to me that the powers conferred upon the association by the 5th section were beyond the authority of the local legislature to confer, inasmuch as the Parliament of Canada, by the British North America Act, has the exclusive legislative authority with regard to "banking" and "interest," and it appeared to me that the bill contemplated that the association should carry on some of the branches of business usually regarded as banking.

The section in question authorizes the association to borrow money at such rates of interest as the directors think proper, and for that purpose to make any mortgage, bonds or other instruments, under the seal of the company, for sums not less than \$500 each.

It also authorizes the company to receive money on deposit for such period and at such rates of interest as may be agreed upon, such deposits and outstanding mortgages, bonds, or other instruments of the association, not to exceed at any one time the subscribed capital stock of the association, which the 13th section fixed at \$500,000, whereof one-tenth was paid up before the transaction of business by the company. The bill did not come under my inspection until the morning of the day that the legislature was prorogued, and as I had not time for careful consideration of the effect of the provisions I have above referred to, I deemed it right to reserve the bill, and I have, in consequence, to request that the pleasure of his Excellency the Governor General with regard thereto may be signified in the usual manner.

I have, &c.,

ALEX. MORRIS,

*Lieutenant-Governor.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 25th October, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th October, 1876.

Upon the bill, intituled: "An Act to incorporate the Manitoba Investment Association (limited)," passed in the last session of the legislature of that province, and reserved on the 4th February, 1876, by the Lieutenant-Governor, and upon the despatch of the Lieutenant-Governor annexed to the bill, the undersigned has to report as follows:—

The Lieutenant-Governor reserved the bill upon the presumption that the powers conferred upon the association by the 5th (fifth) section, which authorizes the directors to "borrow money on behalf of the company at such rates of interest and upon such terms as they may from time to time think proper; and the directors may for that

purpose make and execute any mortgage, bonds or other instruments under the common seal of the company, for sums of not less than five hundred dollars each, or assign, transfer or deposit by way of equitable mortgage or otherwise, any of the documents or title deeds, muniments, securities, or property of the company, and either with or without power of sale or other special provisions as the directors shall deem expedient, provided that the aggregate of the sum or sums so borrowed, shall not at any time exceed the amount of subscribed capital of the company for the time being not paid up, and no lender shall be bound to inquire into the occasion for any such loan, into the validity of any resolution authorizing the same, or the purpose for which such loan is wanted."

And by the 9th (ninth) section, which authorizes the company to receive money on deposit for such periods and for such rate of interest as may be agreed on, provided that the aggregate amounts of such deposits, together with the amount of the mortgages, bonds or other instruments given by the association, remaining unpaid, shall not, at any time, exceed the amount of the subscribed capital stock of the association,"—were beyond the authority of the local legislature, having regard to the fact that by the British North America Act, 1867, the Parliament of Canada has exclusive authority with regard to banking and interest.

The question thus raised is one of very great difficulty, and the undersigned cannot but observe that considerable complication and, perhaps, serious difficulties may arise from the course which has been pursued in more than one provincial Act on this subject; but, having regard to the fact that many provincial Acts dealing with these subjects have been left to their operation, the undersigned would have deemed it beyond his province, as Minister of Justice, to recommend that, upon the grounds stated by the Lieutenant-Governor, a different course should be pursued with reference to this Act had it been finally passed—since he conceives that a certain policy has been established by the course hitherto pursued—and that it is for council to determine whether, at this time, it is possible to reconsider the question, or to take a new departure upon such a subject.

Amongst the Acts which have been left to their operation, he may refer to the Ontario Acts, 1873, cap. 107:—

"An Act to incorporate the Toronto Financial Corporation, 1873, cap. 128."

"An Act to revive and amend the Act incorporating the Toronto House Building Association."

1868-9, chap. 68. "An Act to incorporate the Ontario Trust and Investment Company."

1868, chap. 63. "An Act to incorporate the Toronto Trust Company."

But the undersigned feels bound to call attention of council to the fact that the Act now under consideration confers upon a provincial company, unlimited power to borrow, whereas, under the above Acts, the borrowing powers are limited to the amount of the company's paid-up capital, and the present policy of the Canadian Parliament, as evidenced by the mode in which private Acts for the incorporation of similar companies were dealt with last session, is to limit such powers. Yet, even here the undersigned is not met by the fact that, under the General Joint Stock Companies Act of Ontario, cap. 35 of the Statutes of 1874, which was left to its operation, provision was made for incorporating companies for any purpose or objects to which the legislative authority of the legislature extends, except the construction and the working of railways and the business of insurance, and that, by the 25th section of the Act, power is given to the directors of companies chartered thereunder, with the sanction of a certain proportion of the shareholders, to borrow money on the credit of the company, and issue bonds, debentures or other securities therefor.

This power is unlimited, and, under this statute, a loan and investment company may be incorporated, and so obtain unlimited power to borrow; and upon the whole, therefore, the impression of the undersigned would have been (had this bill come before him as an Act, with a view to his decision whether it should be disallowed or not) that it should be left to its operation, but this is not the question.

The question is whether council should advise his Excellency to assent to this Act, which is a reserved bill.



It appears to the undersigned that, as a general rule, the Lieutenant-Governor should himself act with the advice of ministers upon the question of assent.

To this rule there will no doubt be, from time to time, exceptions, but the undersigned submits to council whether this bill comes within the exceptions. Upon the whole, considering the difficulties to which the undersigned has adverted, and the inconveniences which might result from the Governor in Council being called upon to give vitality to provincial legislation of this description, the undersigned recommends that no action be taken upon the bill in question. If re-introduced into the local legislature, the local government will be able to consider the difficulties which have been stated, with a view to recommend such amendments as they may think expedient.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th February, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th January, 1878.

I have the honour to report upon the statutes of the legislative assembly of the province of Manitoba, in the 40th year of Her Majesty's reign (1877), received by the Secretary of State on the 15th day of May, as follows:—

Chapters 1 to 4. These Acts appear unobjectionable, and I recommend that they be left to their operation.

Cap. 5.—“An Act to amend the Act passed in the thirty-seventh year of Her Majesty's reign, intituled: ‘The Half-breed Land Grant Protection Act.’”

This Act will be reported upon at a future time.

Cap. 6.—“An Act respecting County Municipalities.”

The 15th section of this Act provides that any person wilfully making a false declaration of his right to vote shall, on conviction thereof before any two or more justices of the peace, be subject to a fine not greater than one hundred dollars, and in default of payment of such fine to be levied by distress, or, in case of insufficient distress, to imprisonment for a period not greater than forty days.

This section seems to entrench upon the criminal law. The Act respecting perjury, being cap. 23, of 32 and 33 Vic. (1869), seems to make sufficient provision for the punishment of a person making a false declaration in such a case.

I recommend that the attention of the Lieutenant-Governor be called to these remarks.

I think that so much of the 15th section as provides for the punishment of a person making a false declaration should be repealed before the time expires within which the Act may be disallowed.

The 16th section gives the council of every municipality, power to pass by-laws in relation to matters coming within certain specified classes of subjects, among others by the 27th subsection, the imposing penalties for light weight or short count measurement in anything marketed.

This seems to entrench upon the subject of weights and measures, which, by the 91st section of the British North America Act, 1867, comes within the exclusive legislative control of the Parliament of Canada. The inconvenience of a possible conflict between the laws of Canada and the by-laws of a municipality upon this subject is obvious.

I recommend that the Lieutenant-Governor's attention be called to these remarks.

Section 17 empowers the council to assess and levy, on the whole rateable property within its jurisdiction, a sufficient sum each year to pay all valid debts of the corporation.

The 20th section provides that the following real estate shall be exempt from taxation under this Act:—

1. Real estate vested in or held in trust for Her Majesty, or for the public use of the province.

2. Real estate vested in or held in trust for the municipality.

3. Real estate vested in or held in trust for any tribe or body of Indians.

4. Every place of public worship, houses of religion, &c.

By the 125th section of the British North America Act, 1867, it is provided that "no lands or property belonging to Canada, or any other province, shall be liable to taxation."

It cannot be said that the exemption contained in the 20th section is as wide as it should be, having reference to the provision of the British North America Act just alluded to, but as a previous Act respecting county municipalities, passed by the Manitoba legislature, namely, 38th Victoria (1875), cap. 41, containing similar provisions, was allowed to go into operation, and as any attempt to tax, under this Act, any land or property belonging to Canada would be useless I cannot recommend any interference with the Act, on account of the provisions of this clause. Had the Act been the first of its kind which had been passed in the province, I would have felt called upon to submit, for the consideration of council, the question whether or not the exemptions from taxation should not be extended to the right of way and other property of any company which might be formed for the construction of the Canadian Pacific Railway; but as the Act above mentioned, namely, 38th Victoria, (1875) cap. 41, contains no such exemption, and other legislation in Manitoba has been left to its operation, under which taxes are authorized to be levied, and which contains no exemption in favour of any Canadian Pacific Railway Company (see cap. 19, 35th Victoria (1872), and cap. 50), 38th Victoria (1875), it would seem that an objection to the Act could not now, on that ground, be made, without departing from the principles which appear to have been established with reference to the exercise of the power of disallowance, and in this case the fact that the previous legislation, which has been left to its operation, is in the same province, and in respect of the same subject-matter, is an additional reason, if one were required, why the question cannot now be considered an open one.

With respect to chapters 7 to 11, 18 to 29, 31 to 33, 37 to 42, 44 to 48. These Acts appear unobjectionable, and I recommend that they be left to their operation.

Cap. 12.—"An Act to amend the Act to establish a system of Education in this province."

The 17th section of this Act provides that if any person wilfully makes a false declaration of his right to vote, he shall be liable to a penalty of not less than fifty, nor more than one hundred dollars, and in case of default of payment, to imprisonment during a period of not more than thirty days.

This seems to entrench upon the criminal law respecting perjury.

The Perjury Act, above referred to, seems to provide for punishment of a person for making a false declaration in such a case.

I think this section should be repealed, and I recommend that the attention of the Lieutenant-Governor be called to these remarks.

Cap. 13.—"An Act respecting the Medical Profession."

To this Act there appears to be no objection, and I recommend that the same be left to its operation.

Chap. 14.—"An Act respecting the Study and Practice of Law."

This Act incorporates all persons in actual practice of the legal profession in the province, under the name of the Law Society of Manitoba, and provides who may be admitted and enrolled as an attorney in the province. The persons entitled to be admitted to practise at the bar are:—

1. Those who have been admitted into the law society as students of law, and have been standing on the books for five years and have conformed themselves to the rules of the society.

2. Those who have taken certain university degrees, have been admitted into the law society and have been standing on the books for three years.



3. Any person who has been duly called to the bar of any of Her Majesty's superior courts of law or equity in any of the provinces of the Dominion of Canada or in England, Scotland or Ireland, and who produces sufficient evidence of such call, and testimony of good character, to the satisfaction of the law society.

Those entitled to be enrolled attorneys are :—

1. Persons heretofore empowered to practise as attorneys in the province.

2. Those who have served under articles to a practising attorney in the province for five years, and who have conformed themselves to the rules of the Society.

3. Those who have taken certain university degrees and have served under articles to a practising attorney in the province, for three years and have conformed to the rules of the society.

4. An attorney or solicitor in good standing of any of Her Majesty's superior courts of law or equity in any of the provinces of the Dominion, or England, Scotland or Ireland, shall be *de facto* admitted to practice as an attorney or solicitor in the courts of the province of Manitoba, on production of his certificate or diploma, and on proof of his good character, and upon such terms as such benchers shall see fit.

In the year 1872 a bill was passed by the legislature of Manitoba, intituled : "An Act to constitute and incorporate the Law Society of Manitoba," and was reserved for the assent of the Governor General. The Lieutenant-Governor, in his despatch accompanying it, stated as follows :—

The bill, even if the policy were sound, under any circumstances seemed to me premature. In a country like this obstacles should not be thrown in the way of any person of good standing at the bar of any other province being admitted to the practice of the law here.

If the provisions of the Union Act, which confine the selection of judges in any province to the bar of that province, should be, as I think they are, applicable to Manitoba, it would not be desirable so to fence the admission here as to restrict the government at Ottawa in the selection of their judges, to such persons as the existing members of the bar here might think fit to admit. But another important objection is the power given under the bill to the bar to regulate their own fees. Whether that is desirable at any stage of the history of the bar of a country, there can be no doubt that it would be a most dangerous power to extend to the bar of this province in its present condition. For the reasons mentioned by the Lieutenant-Governor, the assent of his Excellency was not given to the bill. As the Act now under consideration does not present the objectionable features contained in the previous bill, and as provision is made for the calling to the bar, of persons who have been only called to the bar of any of Her Majesty's superior courts of law or equity, in any of the provinces of the Dominion, and for the enrolment as attorney, of any attorney and solicitors in good standing of any of Her Majesty's superior courts of law or equity in any of the provinces of the Dominion, I recommend that the Act be left to its operation.

Chap. 15.—"An Act to authorize Corporations and other institutions incorporated out of the province of Manitoba to lend and invest moneys therein."

The first section of this Act provides that where any institution or corporation duly incorporated under the laws of the Parliament of Great Britain and Ireland, or of the Dominion of Canada, for the purpose of lending or investing moneys, may apply for and receive a license to carry on business within the province of Manitoba, and certain conditions are to be complied with, and a certain fee (to be fixed by the Lieutenant-Governor in Council) paid before the license can be granted.

The right of a provincial legislature to provide for the granting of a license by the province, to a company incorporated by the Parliament of Canada, and which by its Act of incorporation could be given the right to do business in the various provinces, is at least doubtful, but inasmuch as similar legislation has been allowed to go into operation in the province of Ontario, (*See* cap. 27 of 39 Vic., 1875-76, Ontario,) I do not recommend any interference with this Act. I recommend, however, that the attention of the Lieutenant-Governor be called to these remarks.

Cap. 16.—"An Act to amend "The Manitoba Election Act."



To this Act there appears to be no objection, and I recommend that it be left to its operation.

Cap. 17.—“An Act to legalize the lists of the Parliamentary Electors of 1877 for the City of Winnipeg.”

The word “parliamentary” which occurs in the title to this Act, and also in the first section, is objectionable. This was pointed out in the report of the Minister of Justice upon the Manitoba legislation, dated 21st February, 1874, and also by the report of the Minister of Justice, dated 6th October, 1876. It is therefore unnecessary for me to do more than refer to those reports.

I recommend that the attention of the Lieutenant-Governor be called to this Act, with a view to its amendment, so as to obviate the objection mentioned.

Cap. 30.—“An Act respecting Companies for the establishment of Cemeteries in Manitoba.”

Section 28 provides, among other things, for the punishment by fine of any person who wilfully destroys, defaces, &c., any tomb, monument, &c., or any tree, shrub, or plant in a cemetery.

This seems to entrench somewhat upon the criminal law relating to malicious injurious to property. (*See* cap. 22, of 32 and 33 Vic., 1869.)

I do not, however, recommend the disallowance of this Act, but I recommend that the attention of the Lieutenant-Governor be called to its provisions.

Cap. 34.—“An Act to amend the Acts relating to the sale and traffic of Intoxicating Liquors, and the granting of Licenses in this Province.”

The third section of this Act provides that any person who shall have obtained a license to sell intoxicating liquors by means of fraud, &c., or by putting or inscribing, or causing to be put or inscribed, upon any of the documents referred to in the section, the names of any persons without their consent or knowledge, shall, upon conviction, be liable to a fine not exceeding \$300.

This provision seems somewhat to entrench upon the criminal law respecting forgery.

I recommend that the attention of the Lieutenant-Governor be called to it.

Cap. 35.—“An Act to amend an Act for the protection of Game in the Province of Manitoba.”

To this Act there appears to be no objection, and I recommend that it be left to its operation.

Cap. 36.—“An Act to repeal 34th Vic., cap. 21, to make better provision in reference to Dogs.”

In the first section of this Act, which provides for the killing of dogs which worry sheep, under a certain penalty, the amount of the penalty is left blank.

Cap. 43.—“An Act to amend the amended Act respecting the incorporation of the City of Winnipeg.”

The sixth section of the Act seems to entrench upon the subject of interest, which by the British North America Act comes under the exclusive legislative control of the Parliament of Canada.

The 13th section is as follows:—

“All fines and penalties imposed, levied and collected by the police magistrate appointed under this Act, shall be, unless otherwise provided, paid into the city exchequer, and form a fund for the payment of the salary of the police magistrate and maintaining the police force of the said city.”

The province of British Columbia, in the year 1877, passed an Act authorizing “certain municipalities to retain and use the court fines, fees and forfeitures, as part of the civic revenue.” The approved report upon this subject contains the following remarks, viz. :—

“Notwithstanding anything to the contrary contained in any Act, ordinance, or proclamation, it shall be lawful for every municipality paying the annual salary of a police magistrate, and maintaining a police force, to retain and use, as part of the municipal revenues, all police court fines, fees and forfeitures.”

This provision is wide enough to cover not only fines and forfeitures incurred for breach or non-compliance with laws of the province made in relation to matters coming

within the classes of subjects over which the provincial legislature has exclusive legislative authority, but also all fines and forfeitures, which may be imposed at the police court under the criminal law of Canada, or by reason of the breach of, or non-compliance with, the laws of Canada. The 102nd section of the British North America Act, 1867, provides that:—

“All duties and revenues over which the respective legislatures of Canada, Nova Scotia and New Brunswick before and at the union had, and have power of appropriation, except such portions thereof as are by this Act reserved to the respective legislatures of the provinces, or are raised by them in accordance with the special powers conferred on them by this Act, shall form one consolidated revenue fund, to be appropriated for the public service of Canada, in the manner, and subject to the charges in this Act provided.”

“There does not appear to be any provision in the Act reserving to the provinces the revenues derived from fines or forfeitures under the criminal law, and as the Parliament of Canada has exclusive legislative authority over the criminal law (except the constitution of courts of criminal jurisdiction), and as the Parliament alone can alter the existing criminal law under which fines and forfeitures are imposed, and can create new crimes punishable by fine or forfeiture, and alone increase or reduce the amounts of fines and forfeitures under the criminal law, or altogether abolish them, I am of opinion that the provision of this Act, so far as it attempts to control or dispose of fines and forfeitures imposed by the criminal law or by any of the other laws of Canada, is *ultra vires* of the powers of the provincial legislature and I recommend that the attention of the Lieutenant-Governor be called to this Act to the end that the same may at the next session of the provincial legislature be repealed, or so amended as to confine it to fines and forfeitures arising under laws of the province made in relation to matters coming within the exclusive legislative authority of the province, otherwise that it be disallowed.”

These remarks are applicable to the section now under consideration. I recommend that the same course be pursued with this section, as was pursued in the case of the Act of British Columbia.

I concur.

R. LAFLAMME,  
*Minister of Justice.*

Z. A. LASH,  
*Deputy Minister of Justice.*

*Hon. Attorney-General Royal to the Lieutenant-Governor of Manitoba.*

ATTORNEY-GENERAL'S OFFICE, WINNIPEG, MAN., 5th March, 1878.

SIR,—With reference to the letter of the Secretary of State of the 25th January last, transmitting a copy of a report of the Honourable the Minister of Justice upon the statutes of Manitoba, passed in the fortieth year of Her Majesty's reign, and to the letter of the said Secretary of State of the 20th February last, transmitting a copy of an Order in Council approving the above report, I beg to state that as the general statutes of the province are about to be consolidated, in virtue of a law passed this last session of the provincial legislature, the commissioners will be instructed to avail themselves of the suggestions contained in the above mentioned report.

I have, &c.

J. ROYAL,  
*Provincial Secretary and Attorney-General.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor-General in Council on the 2nd May, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th April, 1878.

Referring to my report, dated 15th January, 1878, upon the statutes passed by the legislative assembly of the province of Manitoba, in the year 1877, and in which certain objections were taken to certain provisions of those statutes, I beg to report :—

That a communication has been received from the Lieutenant-Governor, inclosing a letter from Attorney-General Royal on behalf of the government, stating the intention of the government in reference to the objections taken. This letter referring to the report and to the Order in Council approving the same, states that as the general statutes of the province are about to be consolidated, pursuant to a law passed during the last session of the legislature, the commissioners will be instructed to follow the suggestions contained in the report.

Relying upon the assurance contained in this letter that the objections to the statutes will be thus removed, I recommend that the various Acts to which objection has been taken, be left to their operation.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

R. LAFLAMME,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor-General in Council on the 4th May, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd May, 1878.

I have the honour now to report upon cap. 5 of the statutes passed by the legislature of the province of Manitoba in the year 1877, which chapter was omitted from the previous report. It is intitled : "An Act to amend the Act passed in the 37th year of Her Majesty's reign, intitled : 'The Half-breed Land Grant Protection Act,'" and amends the Half-breed Land Grant Protection Act, passed in the year 1874, reserved for the assent of the Governor General, reported upon by the Minister of Justice on the 21st February, 1874, and assented to by his Excellency in Council on the 27th February, 1874.

In the report which accompanied the reserved bill, the Lieutenant-Governor stated that speculators had bought largely from half-breeds their claims to allotments at low prices, ranging as low in some cases as \$15, the maximum being \$50. That the object of the bill was to cancel all these sales, and give the vendee an action to recover back the price.

One of the reasons for passing the bill, as mentioned in the preamble, appears to have been that the half-breeds entitled to participate in the grant, made the agreements to sell their rights to speculators, in evident ignorance of the value of their shares, accepting therefor only a trifling consideration.

In 1875, an Act was passed, being 38th Vic., cap. 37, to amend this Half-breed Land Grant Protection Act. It provided in effect that, if the half-breed who had sold his right returned or tendered to the purchaser the full consideration, and such expense as the purchaser had incurred in the transaction, with interest at 12 per cent per annum, within three months from the passing of this Act of 1874, the contract of sale should be void, otherwise, if in writing, that it should be valid, and that he should assign to the purchaser the lands granted to him within three months after the receipt



by him of the patent from the Crown, and it was provided that notice of the passage of this Act of 1875 should be given in the *Manitoba Gazette* for three months immediately after its being assented to. This Act, upon the report of the Minister of Justice, was disallowed.

It appears that no notice, as required was given in the *Manitoba Gazette*, and that the Honourable Mr. Royal, then Attorney-General of Manitoba, who happened to be in Ottawa at the time the Act was reported upon, stated that the notice was not given, in consequence of a doubt on the part of himself and his colleagues, whether the Act would be allowed by the Governor General, and that the Act had not been considered as in force in the province.

The present Act provides that, "Any sale for a valid consideration, and duly made and executed by deed, after the coming into force of this Act, by any half-breed having legal right to a lot of land as such, out of the one million four hundred thousand acres of land in the province for half-breeds, appropriated by the Dominion, of such lot shall be held to be legal and effectual for all purposes whatsoever, and shall transfer to the purchaser the rights of the vendor thereto." Seven years have now passed since the land was appropriated for the half-breeds, and more than four years have elapsed since the passing of the original Half-breed Land Grant Protection Act; during that time the half-breeds must, as a general rule, become well acquainted with the value of their interests in the lands. The circumstances therefore under which the original Act was passed have considerably changed since that time. As the legislature, which in the public interests passed the Act of 1874, have thought it expedient, in the public interests of 1876, under changed circumstances, to modify that Act, and as the present Act renders valid only such sales as are made for valid consideration by deed after the coming into force of the Act, and as the original Act as to the transactions affected by it, has not been interfered with, I think that the Act should be left to its operation, and I recommend accordingly.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

R. LAFLAMME,  
*Minister of Justice.*

## MANITOBA, 41ST VICTORIA, 1878.

4TH SESSION—2ND PARLIAMENT.

*Report of the Honourable the Minister of Justice.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd July, 1878.

During the last session of the legislature of Manitoba an Act was passed intituled: "An Act to create a fund for Educational Purposes."

This Act imposes an annual tax of five cents per acre on all lands owned by a non-resident, and that whether improved or not, and a tax of one cent per acre on all lands owned by any resident or corporation in excess of 640 acres.

Strong opposition has been made to this Act by the Hudson Bay Company, who claim that its provisions are an interference with terms of the deed of surrender, under which that company surrendered to Her Majesty certain rights in Rupert's Land.

The company have expressed their intention of presenting a petition to the Dominion Government, praying that the Act may be disallowed, and are now engaged in the preparation of their case in support of that petition.

As the questions involved are serious ones, I recommend that the Government of Manitoba be requested not to actively enforce the provisions of the Act until the government has had an opportunity of determining whether or not the same should be left to its operation.

It should be added that the government of Manitoba will be afforded facilities for replying to any objections which may be raised to the Act, on the part of the Hudson Bay Company, or others.

R. LAFLAMME,  
*Minister of Justice.*

NOTE.—No order in Council appears to have been passed in the above report, but the substance of it was communicated by despatch to the Lieutenant-Governor of the province.

*Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 31st July, 1878.*

The Committee of Council have had under consideration a despatch dated 27th June, 1878, from the Right Honourable Sir M. E. Hicks-Beach to his Excellency the Governor General, transmitting a copy of a letter from the secretary of the Hudson Bay Company to the Under Secretary of State for the Colonies, bringing under the notice of Sir M. E. Hicks-Beach, the provisions of an Act passed in the last session of the legislature of Manitoba, intituled: "An Act to create a Fund for Educational Purposes," and alleging certain reasons why lands of the Hudson Bay Company, should not be classed as lands owned by the non-residents, or be subject to the taxation proposed to be levied under the provisions of the bill.

The committee recommend that Sir M. E. Hicks-Beach be informed that the question of the constitutional power of the legislature of Manitoba to enact such a law, is under the consideration of the Minister of Justice, and should the Hudson Bay Company, through their legal advisers, think proper to offer any suggestion or arguments in favour of the view taken by them, they will receive the fullest consideration from the Minister of Justice, and in the meantime the government of Manitoba has been requested not to actively enforce the provisions of the Act until the government of Canada has had an opportunity of determining whether or not the law should be left to its operation.

W. A. HIMSWORTH,  
*Clerk Privy Council.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 11th October, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th October, 1880.

I have the honour to report upon the statutes of Manitoba, passed in the forty-first year of Her Majesty's reign (1878), as follows :—I recommend that the power of disallowance be not exercised in respect to these Acts : Chapters 1 to 12, 15 to 38.

Cap. 13. "An Act to create a fund for educational purposes."

This Act was objected to by the Hudson Bay Company, as being an unconstitutional interference with their rights, and as in effect imposing an exceptional tax upon their lands. The Act was held by the court of Manitoba to be unconstitutional, and was repealed in the next session of the legislature.

No action was therefore necessary upon the Hudson Bay Company's petition.

Cap. 14. "An Act to regulate the sale of intoxicating liquors and the granting of licenses in this province."

This Act deals with licenses for the sale of intoxicating liquors, and some of its provisions may be held to entrench upon the powers of parliament with respect to the regulation of trade and commerce, but as provisions of a similar nature have been passed in most of the other provinces and left to their operation, and it has not yet been determined how far the power to deal with licenses will authorize an interference with trade in intoxicating liquors, the power of disallowance should not, I think, be exercised with respect to this Act.

JAS. McDONALD,  
*Minister of Justice.*

## MANITOBA, 42-43 VICTORIA, 1879.

1ST SESSION—3RD PARLIAMENT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th October, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th October, 1880.

I have the honour to report upon the statutes of Manitoba passed in the forty-second and forty-third years of Her Majesty's reign (1879), as follows :—

Chapters 1 to 11, and 13 to 37.

I recommend that the power of disallowance be not exercised with respect to these Acts.

Cap. 12. "An Act respecting grand and petit jurors and juries and to amend the Manitoba Jurors' Act."

This Act is similar to one passed by the legislature of the province of Ontario, which has been left to its operation, and like the Ontario Act is not to come into force until a day is named by the Lieutenant-Governor by proclamation. If it be decided by the Supreme Court that the power to legislate with respect to the number of grand jurors to find a bill or information, does not exist in the local legislature, this Act will, of course, not be brought into operation.

I recommend that the attention of the Lieutenant Governor be called to these remarks.

JAS. McDONALD,  
*Minister of Justice.*



## MANITOBA, 43RD VICTORIA, 1880.

NOTE.—The Acts of 1880 were incorporated with the Consolidated Statutes of Manitoba of that year, and do not appear to have been reported upon.

## MANITOBA, 44TH VICTORIA, 1881.

3RD SESSION—4TH LEGISLATURE.

*Petition of Mayor and Council of Winnipeg to His Excellency the Governor General.*

His Excellency the Right Honourable SIR JOHN DOUGLAS SUTHERLAND CAMPBELL, Marquis of Lorne, Knight of the Most Ancient and Most Noble Order of the Thistle, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Governor General of Canada, and Vice-Admiral of the same, &c., &c., &c., in Council.

The memorial of the mayor and council of the city of Winnipeg respectfully sheweth :

Your memorialists have heard with regret the rumours that efforts are being made by some interested parties to obtain from your Excellency the disallowance of the Act of the legislature of Manitoba incorporating the Winnipeg South-eastern Railway Company. In view of the future prospects of this country and of the North-west, a future acknowledged to be so great that the eyes of the world are now directed hitherward, every possible facility for ingress and egress to and from our country is greatly to be desired, and any act of your Excellency's government tending to limit or check such facilities would delay the rapid development of our resources, would interfere in a serious measure with the settlement of our fertile plains, and would thus be damaging not only to our city and province, but to the whole Dominion. Your memorialists therefore cannot believe that the best interests of this city and province will be sacrificed to benefit any one corporation or company, be they whom they may.

Believing, as your memorialists do, that the Act incorporating the Winnipeg South-eastern Railway Company is strictly within the jurisdiction of the legislature of our province, we would most respectfully and earnestly urge upon your Excellency and council that the said Act be not disallowed in the true interests of our city, of this province, of the great North-west and of the Dominion at large.

And your memorialists, as in duty bound, will ever pray, &c., &c.

Dated at Winnipeg, in the province of Manitoba, this sixteenth day of November.

E. G. CONKLIN,  
Mayor.  
A. M. BROWN,  
City Clerk.

*Report of the Hon. the Minister of Railways and Canals.*

DEPARTMENT OF RAILWAYS AND CANALS, OTTAWA, 2nd November, 1881.

The undersigned has the honour to represent that at the last session of the legislature of the province of Manitoba, the following Railway Acts were passed :—

1. Cap. 37. "An Act to incorporate the Winnipeg South-eastern Railway Company."

2. Cap. 38. "An Act to incorporate the Manitoba Tramway Company."

3. Cap. 39. "An Act to incorporate the Emerson and North-western Railway Company."

That by a letter dated the 18th ultimo, the Canadian Pacific Railway Company have pointed out the effects which the construction of these several lines will have upon the traffic which would legitimately appertain to their road; calling attention to the fact that one of the most essential of the conditions upon which the work was undertaken; and more particularly the eastern division of it, extending from the Thunder Bay Branch to Callander Station was, that no diversion of the traffic which the company might reasonably be expected to carry over that division, would be permitted by the construction of railways tending to tap the traffic of Manitoba and the North-west.

That the chief engineer has thereupon reported that all these several charters conferred by the Act above cited, empower the respective companies to run to the boundary between the province of Manitoba and the state of Minnesota, a privilege which undoubtedly conflicts with the spirit of the Canadian Pacific Railway Act, section 15, of which reads as follows:—

"For twenty years from the date hereof, no line of railway shall be authorized by the Dominion Parliament to be constructed south of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run south-west or the westward of south-west, nor to within fifteen miles of latitude 49."

The section being apparently placed in the agreement with the company, upon the consideration that it is most desirable, and altogether in the public interest, that the heavy traffic to be expected from the great North-west should pass directly to the sea-board, or to Eastern Canada by the national route, and over the Canadian system of railways, and that no facilities should be given which would tend to divert this traffic directly out of our own country, to find its way eastward by American railways.

The engineer reports that if the Acts of incorporation referred to are allowed to become law, they will not only very much injure the carrying trade of Canada, but will in every way facilitate the passing of the traffic in question directly into the United States, and its transportation eastward over American roads.

In addition, the undersigned desires to state that during the session of 1880, when the government were carrying on the railways as a government work, he was authorized by the government, after the fullest discussion of this question in all its bearings, to state to the committee of the House of Commons on Railways and Canals, that the government could not assent to the incorporation of any line running to the American frontier in an easterly direction, it being considered essential to the interests of the Dominion that the traffic of the North-west should, as far as possible, be retained on the Canadian Pacific Railway.

That the policy of the government met with apparent approval from all parties, and the application made for a charter for the Emerson and Turtle Mountain Railway Company was refused.

That while such was the view taken in 1880, the importance of this policy became doubly manifest in 1881, when arrangements were completed for the construction of through lines running to the north of Lake Superior, and the same policy was adhered to last session.

For the reasons above stated he is of opinion that the interests of Canada would be imperilled by the construction of the proposed lines of rail communication, and submits that the Minister of Justice should be invited to report whether his Excellency the Governor General should not be advised to disallow the Acts of the legislature of the province of Manitoba, referred to, viz:—

1. Act 44 Vic., cap. 37, intituled: "An Act to incorporate the Winnipeg South-eastern Railway Company."



2. Act 44 Vic., cap. 38, intituled: "An Act to incorporate the Manitoba Tramway Company."

3. Act 44 Vic., cap. 39, intituled: "An Act to incorporate the Emerson and North-Western Railway Company."

Respectfully submitted.

CHARLES TUPPER,  
*Minister of Railways and Canals.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th January, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th January, 1882.

*To His Excellency the Administrator in Council:*

The undersigned has the honour to report that at the last session of the legislature of Manitoba the following Act (among others) was passed and assented to by the Lieutenant-Governor, on the 25th day of May, 1881, viz., cap. 37, "An Act to incorporate the Winnipeg South-eastern Railway Company."

The line to be built by the company is thus defined by the third section of their charter:

"3. The said company and their servants and agents shall have full power and authority to lay out and construct, make, finish and operate a railway with single or double track and an electric telegraph along the same, such railway to commence from a point at or near the city of Winnipeg, thence running in a south-easterly direction to the boundary line between the province of Manitoba and the state of Minnesota aforesaid; and the company shall have power and authority to construct the different sections of the said railway in such order as they shall see fit, keeping in view the general direction as herein provided."

In the contract dated 21st October, 1880, between the government of Canada and the Canadian Pacific Railway, which was approved and ratified by the Act of the Parliament of Canada assented to on the fifteenth day of February, 1881, the following clause is contained;

"(15.) For twenty years from the date hereof, no line of railway shall be authorized by the Dominion Parliament to be constructed south of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run south-west or to the westward of south-west; nor to within fifteen miles of latitude 49, and on the establishment of any new province in the North-west Territories, provision shall be made for continuing such prohibition after such establishment, until the expiration of the said period."

In the Act of the Parliament of Canada 44 Vic., (1881), cap. 14, intituled: "An Act to provide for the extension of the boundaries of the Province of Manitoba," it is, by subsection 2, provided as follows:—"The said increased limit and territory thereby added to the province of Manitoba shall be subject to all such provisions as may have been, or shall hereafter be enacted respecting the Canadian Pacific Railway and the lands to be granted in aid thereof."

Under the powers conferred upon the South-eastern Railway Company, their line might be built so as to run to the boundary line, through part of the territory added to the province by the Act last above mentioned.

The undersigned begs to call attention to the order of his Excellency in Council of the 18th April, 1879, a copy of which was transmitted to the government of Manitoba on the 23rd of that month, and receipt of which was acknowledged by the Lieutenant-Governor on the 2nd of May following; in that order the following language occurs, viz.:

"That as respects the railway policy to be pursued in that province, it has been decided that the line of the Canadian Pacific Railway shall pass south of Lake

*where it would run*

*but increased boundary  
\* could be an sign-  
ment along  
more clear*



Manitoba, and in accordance with the suggestion of Messrs. Norquay and Royal, the government will oppose the granting of a charter for the present session at least, for any railway in Manitoba other than the one recommended by them from Winnipeg south-westerly towards Rock Lake. The government think it very desirable that all railway legislation shall originate here, and that no charter for a line exclusively within the province of Manitoba should be granted by its legislature, without the Dominion government first assenting thereto."

The undersigned is personally aware from the interview with Messrs. Norquay and Royal upon the subject, that these gentlemen (then members of the Manitoba government, Norquay being then, as now, premier), on behalf of their government agreed to the policy of this government as indicated by the above extract from the Order in Council of 18th April, 1879. At no time since has the government of Manitoba, so far as the undersigned is aware, intimated that the assent of Messrs. Norquay and Royal above referred to, was not binding upon them.

The undersigned also calls attention to the provisions of subsection 10 of section 92 of the British North America Act under which the legislatures of the provinces derive their legislative authority, which is as follows:—"Local works and undertakings other than those such as are of the following classes: (a) Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province. (b) Lines of steamships between the province and any British or foreign country. (c) Such works as although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of two or more of the provinces."

It is not necessary to express any decided opinion with respect the authority vested in the provincial legislatures by this clause but the undersigned thinks it proper to call attention to the doubt which exists as to the power of a provincial legislature to authorize the construction of a railway, the manifest intention of which is to connect the province with the United States, and practically to extend beyond the limits of the province.

The undersigned begs to refer to the report of the Minister of Railways and Canals, dated the 2nd November last, and in view of all the foregoing facts, and because the Act now under consideration conflicts with the settled policy of the Dominion, as evidenced by the clause in the contract with the Canadian Pacific Railway Company above set out, which was ratified and adopted by Parliament, the undersigned recommends that the Act passed by the legislature of Manitoba in the year 1881, and intituled: "An Act to incorporate the Winnipeg South-eastern Railway Company," be disallowed.

A. CAMPBELL,

*Minister of Justice.*

*W. J. S. Minister*  
Order in Council disallowing the Act above mentioned, published in the "Canada Gazette," on the 11th day of January, 1882, Vol. XV., No. 29, page 977.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 3rd November, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st October, 1882.

*X*  
To His Excellency the Governor General in Council :

The undersigned has the honour to report:—

That the contract, dated 21st October, 1880, made between the government of Canada and the Canadian Pacific Railway Company, contained the following clause—

"15. For twenty years from the date hereof, no line of railway shall be authorized by the Dominion Parliament to be constructed south of the Canadian Pacific Railway

*W. J. S. Minister*  
*Canada*

from any point at or near the Canadian Pacific Railway, except such line as shall run south-west or to the westward of south-west, nor to within 15 miles of latitude 49, and in the establishment of any new province in the North-west Territories, provision shall be made for continuing such prohibition after such establishment, until the expiration of the said period."

This contract was approved and ratified by Parliament, by an Act assented to on the 15th day of February, 1881, and the action of the government in regard to the direction and limits of railway construction in the Territories of the Dominion became part of the legislation of Parliament, and of the settled policy of the country.

By an Act of Parliament, 44 Vic., chap. 14, intituled: "An Act to provide for the extension of the boundaries of the province of Manitoba," and by an Act of the Legislature of Manitoba, 44 Vic., chap. 1, intituled: "An Act for the extension of the boundaries of the province of Manitoba," it is provided as follows:—

"(1.) The said increased limit and territory thereby added to the province of Manitoba, shall be subject to all such provisions as may have been or shall hereafter be enacted respecting the Canadian Pacific Railway, and the lands to be granted in aid thereof."

The policy of the government, thus confirmed by Parliament, and acquiesced in by legislation in the province of Manitoba, is intended to prevent the diversion of the traffic of the North-West Territories to the railway system of the United States, and to endeavor by all means possible to secure it to Canadian railways.

Two Acts in addition to one already disallowed were passed by the legislature of Manitoba, in the session of 1881, and one in the session of 1882, which are in conflict with the settled policy above referred to.

By 44 Vic., chap. 38 (1881), Manitoba, intituled: "An Act to incorporate the Manitoba Tramway Company," power is given to the corporators to construct and operate cheap iron or wooden tramways along all or any of the public highways of the province, having first secured the consent of the municipality, within which the said public highway is situate.

By section 15, subsection 4, power is given to make, complete, alter and keep in repair, the tramway, with one or more sets of rails or tracks, to be worked by the force and power of steam, or of the atmosphere, or of animals, or by mechanical power, or by any combination of them, the corporators having substantially the power to build and operate a railway.

By 44 Vic., (1881), chap. 30, Manitoba, intituled: "An Act to incorporate the Emerson and North-western Railway Company," the corporators are empowered to construct a railway from a point on the west side of the Red River, opposite the town of Emerson, in the province of Manitoba, to Mountain City or Nelsonville, in the said province, and thence north-west to a point on the western boundary of the said province, and also a branch line from Mountain City or Nelsonville, aforesaid, to the said boundary.

Emerson is situated directly on or very near to the boundary of the United States, and Mountain City is situated within fifteen miles of the 49th parallel of latitude. This company, by its charter, could not only construct a line—crossing the Canadian Pacific Railway and running from it in a south-easterly direction to a point practically on the boundary, between Manitoba and the United States, but could also construct a line west from Mountain City, and wholly within fifteen miles of the 49th parallel.

By 45 Vic., chap. 30, Manitoba, intituled: "An Act to encourage the building of Railways in Manitoba," power is given within the legislative authority of the province, for the incorporation, by letters patent, of any number of persons, not less than five, for the purpose of constructing, maintaining and operating railways for public use in the conveyance of persons and property in the province of Manitoba.

The Act last mentioned was passed subsequent to the extension of the limits of Manitoba, but no provision is made in the Act to give effect to the terms and conditions upon which the boundaries of that province were enlarged, that is, there is nothing in it to prevent the corporators from exercising their powers within the added territory. This Act is, therefore, not only open to the objections pointed out in regard to the two



Acts passed during the session of 1881, but is capable of being used to contravene the terms in regard to the Canadian Pacific Railway, upon which the boundaries of the province of Manitoba were enlarged.

In order that the Act should conform to the legislation of Parliament in regard to the Canadian Pacific Railway, provision should have been made that no company thereby incorporated should be authorized to construct a line of railway south of the Canadian Pacific Railway, from any point at or near that railway, unless the line ran south west, or to the westward of south-west, and terminated at a point distant at least fifteen miles from the 49th parallel of latitude. *Order in Council not including boundaries of Man.*

The undersigned, for the reasons above stated, humbly recommends that the said Acts, namely: 44th Vic., (1881), chap. 38, "An Act to Incorporate the Manitoba Tramway Company," 44th Vic., (1881), chap. 39, "An Act to incorporate the Emerson and North-western Railway Company," 45th Vic. (1882), chap. 30, "An Act to encourage the building of Railways in Manitoba," be disallowed.

A. CAMPBELL,

*Minister of Justice.*

*Order in Council disallowing the Acts above mentioned, published in the Canada Gazette on the 3rd day of November, 1882. Vol. XVI, No. 18, page 744.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th March, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st January, 1883.

*To His Excellency the Governor General in Council:*

The undersigned having had under consideration the Act of the legislature of the province of Manitoba, passed in the year 1881, begs leave to report as follows:—

Chap. 37. "An Act to incorporate the Winnipeg South-eastern Railway Company" was disallowed by Order in Council of the 12th January, 1882, and chap. 38, intituled: "An Act to incorporate the Manitoba Tramway Company," and chap. 39, intituled: "An Act to incorporate the Emerson and North-western Railway Company," were disallowed by Order in Council of the 3rd November, 1882.

Chap. 2. "An Act to bring into force and operation the Consolidated Statutes of Manitoba."

Chap. 7. "An Act to protect Guide Posts along certain roads in this province."

Chap. 16. "An Act respecting the Equity side of the Court of Queen's Bench."

Chap. 28. "An Act for dividing the province of Manitoba into judicial districts and establishing courts therein."

Chap. 33. "An Act to incorporate the Southern Manitoba Loan Company," and chap. 34, for the incorporation of the Winnipeg Suspension Bridge Company, are reserved for a separate report.

In regard to the remaining Acts of the session, the chapters of which are herein-after enumerated, the undersigned recommends that they be left to their operation, viz., chapters 1, 3, 4 to 6, 8 to 15, 17 to 32, 35, 36, 40 to 42.

A. CAMPBELL,

*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th March, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st January, 1883.

*To His Excellency the Governor General in Council:*

The undersigned begs leave to report upon certain Acts passed by the legislature of the province of Manitoba in the session of 1881, reserved for a separate report:—



(1.) By chapter 2. the Consolidated Statutes of Manitoba are brought into force and operation.

On referring to reports on the statutes included in this volume, it will be discovered that many provisions which were objected to have been re-enacted.

The following instances are given :—

(a) 34. Vic., chap. 9, sec. 2, giving the police magistrates all the powers possessed by two or more J. P.'s, is re-enacted by chapter 7, sec. 17, Con. Stats.; should be limited to matters within authority of the legislature.

(b) 37 Vic., 1873, chap. 43, sec. 2, subsec. 1. The word "parliamentary" is objected to, and also the provisions about jurors on criminal trials. Re-enacted by chap. 55, sec. 1, subsec. 1, Con. Stats. (The whole Act is objectionable as legislation in regard to aliens.)

(c) Chap. 18, sec. 53, constitutes certain offences misdemeanours. Act repealed, but this section re-enacted by chap. 60, Con. Stats., Sec. 50.

(d) 38 Vic., 1874, chap. 15. Repeal was advised, as it might conflict with 31 Vic., chap. 48 (Canada), under which foreign insurance companies have been licensed to do business in any part of Canada. Re-enacted by chap. 30 (sec. 2), Con. Stats., Manitoba. (It is objectionable also in requiring license from companies incorporated by Parliament.)

"The Election Act." (e) Chap. 3, Con. Stats., amends the word "parliamentary," but secs. 32, 185, 205, 206 and 235 objected to, as trenching on criminal law, appear to be re-enacted by chap. 3 of the Con. Stats.

*Administration of Justice.* (f) Chap. 5. It was thought that secs. 58 to 60 should be repealed, but they are re-enacted by chap. 37, Con. Stats., secs. 95, 96 and 97.

*Qualifications of J. P's.* (g) Chap. 9, sec. 16, deals with perjury. Re-enacted by chap. 7, Con. Stats., sec. 32.

*Building Societies.* (h) Chap. 21. The provisions respecting interest, insolvency and criminal acts were objected to, but appear to be re-enacted by chap. 9 of the Con. Stats., excepting section 18, repealed.

(i) Chap. 22. The power of the Lieutenant-Governor to remove an insane criminal from gaol to an asylum was objected to, but is re-enacted by Con. Stats., chap. 58, sec. 26.

(j) Chap. 35. To amend the Registry Act. Section 1 objected to as interfering with the devolution of the title of lands before the issue of patents, is re-enacted by chap. 60, sec. 40, Con. Stats.

*Jurors and Juries.* (k) 39 Vic., 1876, chap. 3. It was thought that the provisions as to the selection of French and English speaking jurors would require confirmatory legislation by Canada, but no suggestion was made. This Act is chap. 36 of the Con. Stats.

*Fire Commissioners.* (l) Chap. 5, sec. 9, objected to as trenching on criminal law, but re-enacted by chap. 7, Consolidated Statutes, sec. 94.

(m) Chap. 8. Incorporation of Mutual Fire Insurance Companies.

Sections 70, 71, and 72 were objected to, but are re-enacted. (See chap. 9, Consolidated Statutes, secs. 70, 71, and 72.)

*Respecting Public Works.* (n) Chap. 9, sec. 31, objected to as a possible interference with Dominion authority. Re-enacted by chap. 11, sec. 31, Consolidated Statutes.

(o) 40 Vic., 1887, chap. 30. Cemeteries—Section 23 deals with malicious injuries to property. Re-enacted by chap. 9, sec. 92, Consolidated Statutes.

2. Chap. 7, intituled: "An Act to protect Guide Posts along certain roads in this Province," trenches upon the subject of criminal law. (See 32 and 33 Vic., chap. 22, subsecs. 59 and 60)

3. Chap. 16, intituled: "An Act respecting the Equity side of the Court of Queen's Bench," makes provision for the appointment of an officer to be called the referee in chambers, and the Queen's Bench is authorized to make rules conferring on him large powers ordinarily exercised by a judge. The power of the legislature to give to an officer of the court judicial powers is extremely doubtful.

4. Secs. 73, 75 and 77, of chap. 28, intituled: "An Act for dividing the province of Manitoba into judicial districts and establishing Courts therein," deal with the empanelling of juries in criminal cases, and are not, it is submitted, within the authority of the Legislature.

5. Secs. 2 and 15, of chap. 33, intituled: "An Act to incorporate the Southern Manitoba Loan Company," deal with the subject of interest.

6. By chap. 34, intituled: "For the incorporation of the Winnipeg Suspension Bridge Company," a company is incorporated with power to build a bridge over the Assiniboine River, between Winnipeg and St. Boniface West. Section 14 provides that the bridge shall not be commenced until the plans and site are approved by the Governor General in Council.

This is entirely in accordance with the Act of Parliament since passed, 45 Vic., chap. 37, and the Act can be left to its operation.

The other Acts mentioned in this report, although objectionable in the particulars pointed out, do not, in the opinion of the undersigned, call for the exercise of the power of disallowance. They may, without injury to the public interests, be left for the consideration of the courts. He therefore, recommends that they be left to their operation; and, further, that in case these observations are approved, they be communicated to the Lieutenant-Governor of the province, for the information of his government, and for such action as they may think proper.

A. CAMPBELL,

*Minister of Justice.*

## MANITOBA, 45TH VICTORIA, 1882.

## 4TH SESSION—4TH LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 6th March, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th February, 1883.

*To His Excellency the Governor General in Council :*

The undersigned, having had under consideration the petition of certain members of the Association of Provincial Land Surveyors in the province of Manitoba praying for the disallowance of the second clause of the fifth section of 45 Victoria chapter 54, intituled : "An Act to amend 44 Victoria, cap. 29, intituled : 'An Act respecting the profession of Land Surveyors in the Province of Manitoba ;'" and the communication of the president of the Provincial Land Surveyors' Association of that province to your Excellency on the same subject, dated 6th September, 1882, begs leave to report :—

By 44 Victoria, cap. 39, being "The Land Surveyors' Act, 1881," certain persons holding commissions as land surveyors were constituted an association of land surveyors.

Among other things provision is made for the admission of artied pupils, after a course of study, and an examination similar to that prescribed by section 95 of the "Dominion Lands Act, 1879."

It is material in this connection to note that by section 91 of the Act last-mentioned it is provided that : "Any person who, subsequently to the fourteenth day of April, one thousand eight hundred and seventy-two, shall have been duly qualified by certificate, diploma, or commission, to survey lands in any province of the Dominion, in which, in order to be so qualified, a course of study, including the subjects prescribed by section 95, is required by the law of such province, shall be entitled to obtain, without being subjected to any examination, other than as regards the system of survey of Dominion lands, a commission as Dominion land surveyor ; provided that it shall rest with the board of examiners to decide whether the qualifications required of a surveyor of crown lands in such province, are sufficiently similar to those set forth in the said section ninety-five of this Act, to entitle him, under the foregoing provisions, to such commission ; and provides further, that it must be shown that such province has reciprocated the privilege hereby granted, by granting to Dominion land surveyors, on their application, and without subjecting them to an examination, except as regards a knowledge of the survey laws of such province, diplomas, certificates, or commissions, as the case may be, as surveyors of lands within such province.

"Land surveyors holding diplomas, certificates, or commissions, for provinces of the Dominion, in which the qualifications required by law for surveyors are not similar to those prescribed by this Act, must undergo examination by the board, and satisfactorily pass the same in order to obtain commissions as Dominion land surveyors."

By 45 Vic., cap. 54, sec. 5, subsec. 2, the clause to which the petitioners take objection, those land surveyors who, previously to the transfer to Canada, were duly authorized by the Council of Assiniboia, and those apprentices who had served their full term of three years with a regularly authorized surveyor from any of the provinces of the Dominion previous to the passing of any Act of the legislature of Manitoba respecting surveys and surveyors, shall, on application to the secretary of the association, and on proof of the above facts, and payment of the fee required by the rules of the association, be entitled to a commission to practise as a provincial land surveyor in Manitoba.



The petitioners claim that this clause, not being in the bill as it was drafted and accepted by the government of Manitoba, was inserted during its passage through the assembly, without the committee of the association being consulted, and against their views.

They allege that should the said clause become law, it would have the effect of lowering the standard of the said profession, by allowing ignorant and unqualified persons to become members of the said association, and to practice as provincial land surveyors, thereby causing great injury and inconvenience to the public, and would have the effect of defeating the object for which the said association was formed, and would further, in all probability, prevent reciprocal action on the part of the Dominion board, they requiring similar qualifications for themselves from members of another association.

"All land surveyors duly authorized by the Council of Assiniboia, previous to the transfer of this country to Canada, have been and are admitted members of the said association."

Taking the case as stated, the undersigned is of opinion that no sufficient reason has been shown for the disallowance of the Act. The clause of itself cannot, of course, be disallowed.

The objections urged are for the legislature, it having power to pass the Act in question.

To that body the petitioners should go for their remedy.

It is recommended that the power of disallowance be not exercised in regard to this Act, and also, if this report is approved, the petitioners be informed of the action taken.

It is further recommended that a copy of the petition be forwarded to the Lieutenant-Governor of Manitoba, for the consideration of his government, and for such action as they may deem proper.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 26th June, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th June, 1883.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon the statutes passed by the legislature of the province of Manitoba in the year 1882:—

Chap. 30. "An Act to encourage the building of Railways in Manitoba," was considered in October last, and by Order in Council of the 3rd day of November, 1882, was disallowed.

Chap. 54. "An Act to amend 44th Vic., chap. 29, intituled: 'An Act respecting the profession of land surveyors in the Province of Manitoba,'" was considered in February last on the petition of certain members of the Association of Provincial Land Surveyors in the province of Manitoba. By Order in Council, bearing date the 6th day of March last, it was left to its own operation.

The remaining chapters of the Acts of that session are as follows:—Chapters 1 to 29, 31 to 53, and 55.

The undersigned recommends that the said Acts be left to their operation, but in so doing deems it advisable to call attention to certain provisions of some of the chapters.

The titles to chaps. 16 and 24 are the same. The use of the same titles to different chapters should be avoided.

Chap. 35. "An Act to incorporate the City of Brandon."

Chap. 36. "Charter of the City of Winnipeg, Manitoba, consolidated from 'Th Act of incorporation of the City of Winnipeg.'"

Chapter 36 relates to the charter of the city of Winnipeg, and is consolidated from the Act of incorporation of that city and the Acts in amendment thereof.

These Acts, chaps. 35 and 36, are much alike in their terms, and, with one or two exceptions, the observations in regard to one will apply to the other.

The 3rd subsection of the 8th section of each Act makes provision for trying and punishing a person who assaults or beats any voter.

This is an offence against the criminal law, and the sections should be amended accordingly.

The 61st section of each Act imposes a penalty of \$1,000 upon the city clerk, or other person wilfully altering or falsifying any certified voters' list or copy thereof.

This clause trenches upon the criminal law as to forgery, and should be amended so as to refer only to cases where the alteration is not wilful, or if this is not desired, should be repealed.

By the 78th section of chapter 35, it is provided that debentures shall be valid and recoverable to the full amount, notwithstanding their negotiation by the corporation at a rate less than par, or at a rate of interest greater than 6 per cent per annum.

By section 81 it is provided that in case of default being made in payment of the taxes of any person, the same shall bear interest at the rate of 10 per cent per annum until paid, and arrears of taxes shall bear interest at that rate until paid.

By the 96th section the council is given power to redeem any lands taken in execution and sold by the sheriff, within five years from sale, by paying the purchaser of the lands the amount paid by him, together with the interest at the rate of 8 per cent per annum.

Similar provisions are contained in the 78th, 81st and 96th sections of chapter 36.

The undersigned has before had occasion to express the opinion that where local legislatures enact provisions relating to interest, it is advisable that this be so done as to recognize the legislative authority of Parliament in this respect. No objection is taken to the legislature giving a corporation power to pay any legal rate of interest that may be agreed upon, or any fixed rate within the maximum at the time allowed by law.

These sections go much further, the 81st section being especially open to objection.

The 3rd subsection of the 97th section, giving the city council power to make by-laws for providing for the inspection of gas meters, and the 3, 4, 5, 8, 10, 12, 16, 17 and 21st subsections of the 101st section giving power to make by by-laws on matters touching, more or less closely, the subject criminal law, are also open to objection.

Similar provisions are found in the corresponding sections of chapter 36.

The same kind of legislation is, however, to be found in similar Acts of other provinces, and has been allowed to go into operation without doing more than calling attention to them, as any by-laws made under these provisions will probably come before the courts for decision, and as great confusion will arise if the Acts be disallowed, the undersigned thinks it better that they be left to their operation, and to the judgments of the courts.

By chapter 35, section 101, subsection 2, and by chapter 36, section 101, subsection 2, and sections 105 and 106, provisions are made in regard to the sale of intoxicating liquors in excess of the powers of the legislature.

Since these Acts were passed the decision of the Privy Council in *Russell vs. The Queen* has been given, and Parliament has legislated on the subject. As, however, these provisions were enacted anterior to the action taken by Parliament, and will become inoperative with other provincial legislation on the same subject whenever they conflict with the laws, the undersigned is not compelled to recommend the disallowance of these Acts.

If these observations are approved, the undersigned recommends that the substance thereof be communicated to the Lieutenant-Governor of Manitoba for the consideration of his government, and for such action as they think advisable.

A. CAMPBELL,  
*Minister of Justice.*

## MANITOBA, 46-47 VICTORIA, 1883.

1ST SESSION—5TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th February, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th February, 1884.

*To His Excellency the Governor General in Council:*

The undersigned having had under consideration the Acts of the legislature of the province of Manitoba passed in the year 1883, respectfully recommends that the Acts mentioned in the schedule hereto be left to their operation. The remaining Acts have been reserved for a separate report.

A. CAMPBELL,  
*Minister of Justice.*

## SCHEDULE.

Chapters 2 to 13, 15 to 18, 20 to 37, 39 to 46, 48 to 53, 60 to 77, 79, 82, 84 to 92.

*Hon. Attorney-General Miller to the Hon. the Minister of Justice.*

WINNIPEG, 6th February, 1884.

SIR,—I have the honour to request that, upon submission to you of the Acts of the provincial legislature of Manitoba, 46 and 47 Victoria, for your report, you may be pleased to direct the attention of his Excellency the Governor General to certain provisions of chapter 80 thereof, which appear to be unconstitutional, and beyond the jurisdiction of our legislature, namely, subsections one, nine and fourteen of section 126 and 127 of the said chapter 80.

The sections above referred to, undoubtedly repeal, in so far as the city of Emerson is concerned, section thirty of chapter four of the statutes of this province, passed in the 44th year of Her Majesty's reign, and are inconsistent with the principle of separate taxation of the different denominations for school purposes, as provided for by the Manitoba Act and the Imperial Act.

As I humbly submit that His Excellency in virtue of the authority in him vested in such cases, may, in his discretion, disallow the said Act, chaptered 80 of the statutes of Manitoba in whole or in part, it is respectfully suggested that, in each case, his Excellency may be pleased to determine that the disallowance of the said Act is proper or expedient, in so far as the above mentioned subsections one, nine and fourteen of said section 126 and section 127 are concerned, the question may be relegated to the executive of this province before such disallowance may be made, to the end that the legislature of this province may be afforded an opportunity of repealing any unconstitutional provisions of said Act: and make such other constitutional amendments or alterations that may be advised.

The object in bringing these facts especially under your notice is, that it would be advisable to have the amendments and alterations made to said Act, in such a manner as would not affect vested rights, which have been acquired by third parties, under or in virtue of any of the provisions of the Act above referred to.

I have, &c.,

JAMES A. MILLER,  
*Attorney-General.*



## MANITOBA, 47TH VICTORIA, 1884.

## 2ND SESSION—5TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th August, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th August, 1885.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report with respect to the Acts passed by the the legislature of the province of Manitoba held in the year 1884 (47 Victoria) of which chapters 1 to 54, both inclusive, were received by the Secretary of State on the 27th day of August, 1884, and the remaining Acts, chapters 55 to 79, having been received on the 28th day of March, 1885 ;

Having carefully considered the Acts, the chapters of which are carefully given in the annexed schedule, the undersigned respectfully recommends that they be left to their operation. The other Acts of the session, the undersigned will make the subject of special reports.

All of which is respectfully submitted.

A. CAMPBELL,  
*Minister of Justice.*

*Schedule.*

Chapters 1 to 10, 12 to 25, 27 to 31, 34 to 77 and 79.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th August, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th August, 1885.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon chapters 11, 32, 33 and 78 of the Acts passed by the legislature of the province of Manitoba in the session held in the year 1894 (47th Victoria.)

1. Chapter 11, intituled : "An Act to amend and revive the Acts relating to Municipalities."

In reporting upon Acts of a similar character to this, the undersigned has had occasion frequently to observe that some of the powers given to municipal councils appear, if the language is constructed in its natural sense, to be in excess of those which a provincial legislature may confer. For instance, by section 111 of this Act the councils are given, among other things, powers to make by-laws for (4) the prevention of cruelty to animals ; (11) the prevention and removal of nuisances, (37) the suppression of gambling houses. These are points which come within the scope of the criminal law, and any by-law made by virtue of the powers recited, which conflict with the general criminal law, would be invalid. Probably, however, there are provisions in the nature of police regulations which a council could make under these powers which would be in aid of, and not in conflict with, the criminal laws of the land.

So far as these provisions may be considered an authority for the exercise of such limited powers as these, the undersigned sees no objection to them.

2. Chapter 32, intituled : " An Act respecting Liquor Licenses." Chapter 33, intituled : " An Act to provide for the Revocation and Cancellation of Liquor Licenses in certain cases."

The question of the relative powers of parliament and the legislatures respecting the liquor traffic, being still before the courts, it is unnecessary, the undersigned thinks, to discuss these Acts. But in recommending that under existing circumstances they be left to their operation, he wishes to guard himself against any inference that he believes the Acts to be within the legislative authority of a provincial legislature.

3. Chapter 78, intituled : " An Act to consolidate and amend the several Acts of incorporation of the City of Winnipeg."

By section 35, subsection 2, it is provided that the occupant of property held by, or in trust for Her Majesty, shall, where it is occupied by any person otherwise than in his official capacity, be assessed in respect thereof. So far as this provision may be understood as authorizing an assessment against the occupant, for any part of the Crown's interest in the property or, in other words, for any greater interest than the occupant possesses therein, the undersigned would be inclined to the opinion that it is in conflict with the provision of the British North America Act, 1867, which declares that " no lands or property belonging to Canada or any province shall be liable to taxation."

By section 149 the powers of the city council to pass by-laws are defined, among which will be found powers similar to those discussed in connection with chapter 11, and others of a doubtful character.

By section 192 the power of arresting without warrant is given in certain cases to members of the city police force, and by section 193 a penalty is provided for assaulting police officers.

These are matters already dealt with by the criminal law as enacted by parliament, and the two sections last mentioned should, in the opinion of the undersigned, be repealed by the legislature of Manitoba.

The undersigned recommends, in case this report is approved of, that the Acts mentioned be left to their operation, but that the substance of the report be communicated to the Lieutenant-Governor of the province of Manitoba for the information of his government, and for such action as they shall think necessary.

A. CAMPBELL,

*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th August, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th August, 1885.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon an Act passed by the legislature of Manitoba, in the session held in the year 1884 (47th Victoria), chapter 26, and intituled: " An Act respecting Escheats and Forfeitures and Estates of Intestates."

By this Act the provincial authorities are given authority, among other things, to take possession of property, real and personal, which escheats to the Crown by reason of the person last seized thereof, or entitled thereto, dying intestate and without lawful heirs, or which becomes forfeited to the Crown for any cause except crime, and to administer and make dispositions of such property.

The right of the Province of Ontario to real estate escheated by reason of the person last seized thereof dying without heirs, was established by the judgment of the Lords of the Judicial Committee of the Privy Council in the case of the Attorney-General of Ontario *vs.* Mercer (L. R. 8, App. Cases, 767), but their lordships in that case based their opinion upon the reservation to the provinces contained in section 109 of the British North America Act, 1867, whereby all lands, mines, minerals and royalties belonging to the several provinces of Canada, Nova Scotia and New Bruns-

wick, at the union, were declared to belong to the several provinces of Ontario, Quebec, Nova Scotia and New Brunswick, in which the same were situate or arise.

But their lordships distinctly guarded themselves against being understood as deciding whether the words "royalties," in section 109 of the British North America Act of 1867, extended or not to other royal rights, besides those connected with the province in which the property is, or the Dominion is entitled to personal property escheated for want of heirs.

It is also evident, the undersigned thinks, that the decision of their lordships, before referred to, is not a decision in favour of Manitoba, with respect to real property escheating for want of heirs. Manitoba, when it became a province, was not possessed of any lands, mines or minerals, and it was provided by the 30th section of the Manitoba Act (33 Vic., c. 3), that all ungranted or waste lands in the province should, from and after the date of the transfer, be vested in the Crown and administered by the government of Canada for the purposes of the Dominion, subject to the conditions contained in the agreement for the surrender of Rupert's Land by the Hudson Bay Company to Her Majesty; from which it would appear to be clear that the 109th section of the British North America Act, 1867, is not applicable to that province.

For these reasons the undersigned recommends that the Act under discussion, 47 Vic., chapter 26, intituled: "An Act respecting Escheats and Forfeitures and Estates of Intestates," be disallowed.

At the same time the undersigned is of opinion that the Lieutenant-Governor of Manitoba should be informed that your Excellency's government is ready to join with his government in submitting to the courts for their decision the question herein discussed, so far as they affect the province of Manitoba.

All of which is respectfully submitted.

A. CAMPBELL,  
*Minister of Justice.*

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 29th day of August, 1886, Vol. XIX., No. 9, page 326.*

*Deputy Minister of Justice to Secretary Department of Railways and Canals.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th August, 1885.

SIR,—I am directed by the Minister of Justice to call the attention of the Minister of Railways and Canals to the following Acts respecting railways, passed by the legislature of the province of Manitoba in the session holden at Winnipeg on 13th March, 1884, and closed by prorogation on the 3rd June following.

1. Chap. 66, intituled: "An Act to amend the Act to incorporate the Northern Junction Railway Company."

The 2nd section of this Act is as follows:—

2. The 3rd section of the said Act of incorporation is hereby amended by striking thereout the words: "The terminus of the Canadian Pacific Railway at Stonewall" in the fourth and fifth lines thereof, and inserting therein in the place of the said words "the city of Winnipeg," and adding thereto the following: "Provided always that the said company is hereby authorized to construct and operate a branch line of railway from any part of their line between Stonewall and Shoal Lake to the town of Selkirk."

The 3rd section of the Act of incorporation is further amended by chapter 67, intituled: "An Act to further amend the Act to incorporate the Northern Junction Railway Company."

The 1st section of which is as follows:—

1. The 3rd section of the Act of incorporation is hereby repealed and the following substituted therefor:—"3. The said company shall have full power and authority to locate, build, make, furnish, operate, alter and keep in repair a railway with double or single track, and an electric telegraph along the same, commencing at or near the city



of Winnipeg, and running thence north-westerly to the northern boundary of the province of Manitoba, with power to construct a branch line from any point on the main line to a point at or near the city of Brandon, and the company shall have power to construct the different sections of the said railway in such order as they see fit, keeping in view the general directions as herein provided."

2. Chap. 68, intituled: "An Act to incorporate the Emerson and North-western Railway Company."

By the 2nd section the company have full power and authority to lay out, construct, complete and operate an iron or steel railway from a point in the city of Emerson, in a north-westerly direction, to the town of Portage la Prairie, also a branch line from some point on the said line north of the Pembina Mountain branch of the Canadian Pacific Railway, in a westerly or north-westerly direction to the western boundary of the province.

Provided that nothing herein contained shall be held as authorizing the building of the road within 15 miles of the International boundary, in the territory lately added to the Province.

3. Chapter 69, intituled: "An Act to incorporate the Manitoba Central Railway Company."

By this Act section, 2 of chapter 56 of 46-47 Victoria, intituled: "An Act to incorporate the Manitoba Central Railway Company," is repealed, and the following substituted therefor:—

"2. The said company shall have full power and authority to lay out, construct and operate a railway with double or single iron or steel track, and an electric telegraph line or lines along the same, such railway to commence at the town of Morris, thence running westerly or north-westerly to the western boundary of the province, and from the town of Morris northerly to the city of Winnipeg, and a branch of said railway running easterly or north-easterly from the town of Morris to the Lake of the Woods; Provided always, that no line of railway constructed under the authority of this Act, shall run within 15 miles of the international boundary line, in that portion of the province which was ceded by Acts of the Parliament of Canada, and of the legislature of Manitoba, in the year one thousand eight hundred and eighty-one.

4. Chapter 70, intituled: "An Act to amend an Act to incorporate the Manitoba Central Railway Company and amending Acts."

By the 1st section of this Act the Act last mentioned (chapter 69) is amended as follows: "By adding after the word "Winnipeg," in the seventh line thereof, the following words, "and from the town of Morris southerly to the boundary line of the said province, between the Red River and the first principal meridian in the said province," and by adding the following words to said section: "Provided, also, that no portion of said railway shall be built in the portion of territory added to this province in the year 1881, in such a way as to contravene the terms on which such territory was ceded to the province."

5. Chapter 71, intituled: "An Act to incorporate the Brandon, Souris and Turtle Mountain Railway."

By the 3rd section of this Act the company "shall have full power and authority to locate, lay out, construct, build, make, furnish, operate, alter and keep in repair, a railway with one or more sets of rails or tracks, commencing from a point at or near the city of Brandon, thence south-westerly to a point at or near Turtle Mountain, and westerly to the western boundary of the said province of Manitoba, with power to build bridges, and construct and operate an electric telegraph line along the said railway, and the company shall have power to construct the different sections of said railway in such order as they see fit, keeping in view the general directions as herein provided: Provided always, that the said company shall not construct any portion of its lines within 15 miles of the international boundary line between this province and the United States."

6. Chapter 72, intituled: "An Act to incorporate the Winnipeg and North-eastern Railway Company of Manitoba."

By the 2nd section the "company have full power to lay out, construct, complete, maintain and operate an iron or steel railway from a point at or near the town of East Selkirk, in a northerly direction, on the east side of Lake Winnipeg, to a point within the province at or near 'Family Lake' or Berens River, and from the first-mentioned point, southerly, to the city of Winnipeg, and thence westerly on the south side of the River Assiniboine to the town of Portage la Prairie, crossing the River Assiniboine at such point as may appear to the company to be best, also a branch line from the town of East Selkirk westerly to any point on the main line of the Canadian Pacific Railway, or upon the Manitoba and North-western Railway east of the White Mud River."

7. Chapter 73, intituled: "An Act to give the town of Nelson certain powers for the construction of a railway."

By the first section "the town of Nelson, hereinafter called 'the town,' shall be, and hereby is, authorized and empowered to lay out, construct, complete, equip and operate a line of railway and electric telegraph from any point within the town, to connect with the Pembina Mountain Branch of the Canadian Pacific Railway at or near Morden, a station on the said branch."

I am to state that the Minister of Justice sees no objection to leaving these Acts to their operation, except there are objections touching the general railway policy of the Dominion, and so far as he is able to judge, there is no objection from this point of view, to leaving chapters 66, 67 and 71 to their operation, but with respect to this, as well as to the question as to how far the other chapters may be in accordance with the policy of the government respecting the granting of charters to railways in Manitoba and the North-west Territory, he would be glad to be favoured with the views of the Minister of Railways and Canals.

I have, &c.,

GEO. W. BURBIDGE,  
*Deputy Minister of Justice.*

*Secretary of Department of Railways and Canals to Deputy Minister of Justice.*

DEPARTMENT OF RAILWAYS AND CANALS, OTTAWA, 20th February, 1886.

SIR,—Replying to your letters of the 25th of August and 21st of January last, by which you ask to be informed as to the views of the minister of this department in respect of certain railway Acts passed by the legislature of the province of Manitoba in the session of 1884, I have the honour by direction to state that the charters so granted to the undermentioned railways should be disallowed, namely:—

The Emerson and North-western Railways and the Manitoba Central Railway Company. With regard to the other lines enumerated, the minister does not consider that interference is necessary.

I have, &c.,

A. P. BRADLEY,  
*Secretary.*

*Report of the Hon. the Minister of Justice upon Chapters 68, 69 and 70, approved by His Excellency the Governor General in Council, on the 22nd March, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th February, 1886.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon the Acts of the legislature of the province of Manitoba passed in the session held in the year 1884, which are mentioned in the annexed schedule, and which were reserved for a separate report.

With the papers will be found correspondence between the Minister of Justice and the Minister of Railways and Canals with respect to these Acts. From this correspondence it will be observed that the Minister of Railways and Canals is of opinion that the Acts relating to the Emerson and North-western Railway Company and the Manitoba Central Railway Company should be disallowed.

The undersigned understands that the objection of the minister to these Acts is based upon an apprehension that thereby the companies mentioned will be able to divert trade from the Canadian system of railways to the railways of the United States and that the objection applies to:—

Chapter 68, intituled: "An Act to incorporate the Emerson and North-western Railway Company," and

Chapter 70, intituled: "An Act to amend an Act of incorporate the Manitoba Central Railway Company," and amending Acts, but not to

Chapter 69, intituled: "An Act to amend an Act to incorporate the Manitoba Central Railway Company."

The undersigned has the honour respectfully to submit the correspondence for the consideration of your Excellency in Council.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 22nd March, 1886.*

On a memorandum, dated 25th February, 1886, from the Minister of Justice submitting the correspondence with the Minister of Railways and Canals with respect to certain Acts of the legislature of the province of Manitoba passed in the session of 1884, and which were reserved for a separate report.

The minister observes that it will be seen from this correspondence that the Minister of Railways and Canals is of opinion that the Acts relating to the Emerson and North-western Railway Company and the Manitoba Central Railway Company should be disallowed.

The minister further observes that the objections of the Minister of Railways and Canals to these Acts is based upon an apprehension that thereby the companies mentioned will be able to divert trade from the Canadian system of railways to the railways of the United States, and that the objection applies to:

Chapter 68, intituled, "An Act to incorporate the Emerson and North-western Railway Company," and chapter 70, intituled, "An Act to amend the Act to incorporate the Manitoba Central Railway Company," and amending Acts, but not to

Chapter 69, intituled, "An Act to amend an Act to incorporate the Manitoba Central Railway Company."

The minister submits the correspondence for the consideration of your Excellency in Council.

The committee advise that the Acts of the legislature of Manitoba passed in the session held in the year 1884:

Chapter 68, intituled, "An Act to incorporate the Emerson and North-western Railway Company, and

Chapter 70, intituled, "An Act to amend an Act to incorporate the Manitoba Central Railway Company," and amending Acts, be disallowed accordingly; but that the power of disallowance be not exercised with regard to the Act

Chapter 69, intituled, "An Act to amend an Act to incorporate the Manitoba Central Railway Company."

JOHN J. MCGEE,  
*Clerk, Privy Council.*

*Order in Council disallowing chapter 68 and 70, published in the Canada Gazette on the 27th March, 1886, Vol. XIX., No. 39, page 1366.*



## MANITOBA, 48TH VICTORIA, 1885.

3RD SESSION—5TH LEGISLATURE.

*Petition from Residents of Manitoba with respect to Chapter 17.*

*To His Excellency the Governor General in Council :*

The petition of the undersigned residents of Manitoba, representing the varied commercial and industrial interests of the province, humbly sheweth :—

That at the last session of the legislature of Manitoba, an Act was passed (chapter 17) entitled “An Act respecting the Administration of Justice,” a copy of which, with a digest of a portion thereof, accompanies this petition. That certain exemption provisions embraced in said Act, while making radical changes in the relationship of debtor and creditor in this province, must, if allowed to remain in force, prove a barrier to the progress and settlement of Manitoba, a hardship upon its struggling settlers, and a great injustice to financial and commercial interests.

Before referring to the objectionable provisions of the Act, let us state that previous to its passage the exemption law of Manitoba was much more liberal and generous to the debtor than that of any other province of the Dominion, and while affording an effectual protection of the homestead of the settler from a rapacious creditor, did not place the former beyond the reach of legal measures by which debts could be collected from him. Also, that the passing of the Act of the past session was accomplished by our local legislature in a hurried manner, and during a time of excitement over the outbreak of rebellion in the adjacent territory of the North-west, and consequently did not receive that careful consideration by the legislature, or opportunity for public consideration of its provisions which such an important measure was entitled to. And further, that previous to its passage there had been no public cry against the then existing exemption law, no petition presented for any changes therein, and as far as the desires of the public were concerned there existed no necessity whatever for the passing of the Act against which your petitioners complain. Furthermore, previous to the passage of the Act, a deputation from the Winnipeg Board of Trade waited upon the members of the local government and the committee of the House, and after urging the withdrawal of the bill, and failing to secure the same, received from the members of said committee, promises as follows :—First. That the Act should not be made retroactive, or to affect in any way debts contracted before its passing. Second. That while a homestead should be exempt from seizure and sale so long as the settler actually occupied and used the same, judgments should hold to the extent of preventing the sale or abandonment of same. Both of these promises have been disregarded, as the copy of the Act now furnished plainly shows.

Your petitioners wish first to draw attention to the injustice of the Act to creditors both in this and other provinces. By the terms of the same, agricultural residents have exempt from execution one hundred and sixty acres of land, while there is practically no limit to the value of buildings, machinery and so forth thereon, which are also exempt. In cities and towns a debtor has exempt real estate to the value of twenty-five hundred dollars and personal property to the value of five hundred dollars, and no judgment obtained or registered against any debtor, can be placed as a lien against such real estate in either case, or in any way prevent the debtor from granting a clear title in case he wishes to sell or mortgage. There is therefore, an effectual cover provided for dishonest debtors, who have increased the value of their exempt property by credit obtained, to sell out, pocket the proceeds of sale, put their creditors at defiance, and leave the province.

But the greatest injustice of the Act lies in its being retroactive, in that it applies to debts contracted before, as well as after its passage. In this new province, which has naturally attracted a very considerable number of immigrants, many of whom have but limited means, the building up to a certain extent of a system of credit has been inevitable, and the aggregate of debts owed by the residents of the province is necessarily large, and the retroaction of this law places a very large proportion of this indebtedness beyond the possibility of collection by any process of law, although the obligations were incurred with all the privileges of the former law available to creditors. Thus the liberal creditor who has acted with leniency and generosity to his struggling neighbours, must now be the sufferer.

The effect of the objectionable Act upon the progress and settlement of the province is another point well worthy of the consideration of your Excellency. The action of banks, loan companies, and other financial and commercial institutions, firms and individuals will undoubtedly be to curtail greatly, and in some cases to entirely close down on credit except so far as the very objectionable system of chattel mortgage security is adopted. There is practically no other safe course open to them, and its adoption will be nothing short of a calamity to the whole province, and especially to that portion of our settlers who are not possessed of the means to carry on either trade or farming on a cash basis.

While believing that the time is specially inopportune for the passing of such an Act in this province, your petitioners also venture to suggest, that the interests of trade in the Dominion at large forbid the passing of an Act in any local legislature, interfering so violently as this Act does with the rights of creditors.

Your petitioners further beg to draw the attention of your Excellency to another Act passed in the same session of the Manitoba legislature, a copy of which is attached hereto, entitled "An Act to amend Chapter 37 of the Consolidated Statutes of Manitoba."

This Act has been repealed by the Administration of Justice Act already referred to, but will again come into force by the disallowance of the last-mentioned Act. It therefore becomes necessary to draw your Excellency's attention to the provisions of this repealed Act.

These provisions, your petitioners submit, are open to the same objection as the Administration of Justice Act, and should also be disallowed.

After weighing carefully these and other considerations, as we rest assured, your Excellency will, your petitioners pray that your Excellency may be graciously pleased to disallow both of the Acts above referred to, and allow our province to return to the law in force before their passing, which furnished ample protection to the debtor against oppression, while causing no injustice to the creditor.

And your petitioners as in duty bound will ever pray.

*Petition of Montreal Board of Trade.*

*To His Excellency the Most Honourable Henry Charles Keith Petty-Fitzmaurice, Marquis of Lansdowne, &c., Governor General of the Dominion of Canada, in Council.*

The petition of the Montreal Board of Trade, and of merchants, manufacturers, bankers, &c., of the city of Montreal, humbly sheweth:—

That your petitioners are informed that under the designation of "An Act for the better Administration of Justice, 1885," the legislature of the province of Manitoba has recently enacted a homestead exemption law, the essential provisions of which are of a comprehensive and extraordinary kind:

That your petitioners would not call in question the right of the legislature of Manitoba, or of any other province in the Dominion, to make adequate provision for the faithful administration of justice within its bounds, or to enact a fair and equitable homestead exemption law that would not only invite settlers, but which would assist in

providing for the maintainance of the families of honest and industrious, but unfortunate settlers, who might become financially embarrassed by the vicissitudes of trade ;

That your petitioners have, however, been informed that the aforesaid homestead exemption law is retroactive in its action, and that it is believed hundreds of thousands of dollars will, in consequence, be taken from innocent creditors in other provinces who could not, at the time these debts were incurred, have anticipated or protected themselves from the intervention of such a statute as that herein mentioned, which is certain to be taken advantage of to prevent the payment of what is justly due to them, in consequence of credit extended aforesaid to merchants, traders and others in the province of Manitoba ;

That your petitioners, as well as many others elsewhere, have had extensive business connections with the people of the province of Manitoba, entered upon in good faith, and where the interests of creditors could not be imperilled by the unjustly broad exemption of the homestead exemption law in question ;

That it appears to your petitioners, however, that the provisions of this unexpected homestead exemption law may now, at any moment, be invoked to prevent the payment of just debts arising out of business transactions which have heretofore taken place, so that confiding creditors in other provinces have unexpectedly had their just rights legislated away, by a so-called Act to provide for the better administration of justice.

Wherefore your petitioners do most earnestly represent that there is pressing necessity for a full and careful examination into the character of the homestead exemption included in the aforesaid "Better Administration of Justice Act, 1885," of the province of Manitoba, with a view to disallowing it, at least so far as its provisions may be *ex post facto* and unconstitutional, or for fixing a future date at which its provisions might come into operation, so as to admit of existing transactions between debtors and creditors in Manitoba being equitably arranged.

And your petitioners, as in duty bound, will ever pray, &c., &c.

JOHN KERRY,  
*President Montreal Board of Trade.*

WM. J. PATTERSON,  
*Secretary.*

MONTREAL, 4th June, 1885.

Petitions praying for a disallowance of the Act were also received from the Canadian Binders Manufacturers' Association, from the principal loan companies, from the Boards of Trade of Brantford, St. Thomas, Hamilton and Toronto, from certain banks in the province of Quebec, from certain banks and merchants of the Maritime Provinces, and from residents and ratepayers of the province of Manitoba.

*Hon. Mr. Norquay to the Hon. the Minister of Justice.*

TREASURY DEPARTMENT, WINNIPEG, MAN., 28th July, 1885.

MY DEAR SIR ALEXANDER,—In reply to yours of the 9th July, informing me that you had been waited upon by a deputation partly from Hamilton, Toronto, and Montreal, declaiming against the exemption provisions in our Administration of Justice Act, I beg to inclose you the opinion of the Deputy Attorney General in reference to the consequences that would result from a disallowance of the said Act.

I may add that it is doubtful whether the judges will hold that the Act is retroactive in effect, and I think I may safely say that if it should be declared so the same can be modified at the next session of the legislature. The gratuitous insinuations made by these gentlemen might better, in my opinion, have been omitted, for if anything would justify such action on behalf of the community, it is the rapacity of these same creditors, who, not satisfied with a lien upon the articles they dispose of, insist upon



executions upon all the unfortunate debtors' chattels and real estate, to satisfy their judgments, rendering it impossible for any man who has been unfortunate in business to remain in the country, and compelling him to seek immunity from persecution by leaving the country.

I remain faithfully yours,

J. NORQUAY,  
*Premier and Provincial Treasurer.*

*Deputy Attorney General to Hon. Mr. Norquay.*

DEPUTY ATTORNEY GENERAL, WINNIPEG, MAN., 14th July, 1885.

SIR,—I have the honour to acknowledge receipt of your letter of the 13th instant, and in reply I beg to say that as all the arguments for and against the Act are well known to you, I can only add that, if the Act were disallowed at the present juncture, it would be a matter of very serious inconvenience in the courts; because many little changes and amendments have been effected by the Act, as well as a great many important provisions introduced, which had been omitted in the former consolidation or had not been previously enacted. I might, for instance, mention the improvement in the definition of the powers of the Court of Queen's Bench, and provisions relating to *capias*. The profession have no doubt acted, in many cases, under the new provisions of the Act, and a return to the old system would cause trouble and inconvenience in almost every case, whilst, in some, it might happen that a remedy might be entirely lost. It is almost impossible to say what complications might arise, each case would develop its own, and the operation of the machinery of justice being thus constantly interrupted, would prove a very serious inconvenience. The revival of the laws repealed by the Administration of Justice Act of last session would, in many cases thus lead to confusion, and, perhaps, prove a greater evil in the end than allowing the Act to remain in force until another session, when it might be modified in such a manner as to remove the objections now taken to it. From what I hear on the street, I should say that the people would be satisfied, as a rule, to have the Act to remain in force as it is; but those who have suits pending, or judgments unsatisfied, are naturally discontented. It appears to me that an amendment to the effect that the exemptions should not effect executions in suits pending at the time the Act came into force, or judgments then standing unsatisfied, would be but fair, and would give general satisfaction.

Yours obediently,

L. W. COUTLEE,  
*Deputy Attorney General.*

*Hon. Attorney General Hamilton to the Hon. Minister of Justice.*

DEPARTMENT OF ATTORNEY GENERAL, WINNIPEG, MAN., 27th November, 1885.

SIR, During the last session of the legislature of this province, we passed a law under the title of "The Administration of Justice Act," which among other things dealt with the question of exemption. The feeling in the House that a law should be made similar to that in the western states, was very strong. It was argued that it would affect the policy of immigration into this country, if we did not give as liberal inducements as those of our neighbours. This view prevailed, and by section 117 of the Act I refer to, the exemptions were brought into force. There was a very strong feeling among the boards of trade here and in Ontario and Quebec against the law, the principal objection urged being its retroactive effect. An effort was made to have

the Act disallowed at Ottawa. This in my opinion would be most unfortunate, as it would create a great deal of irritation in the province, and be considered an arbitrary act on the part of the Federal Government. I had an interview in Ottawa with your predecessor, Sir Alex. Campbell, on this matter, and suggested that it would be better to let the Act stand, and introduce a bill at the next meeting of the legislature, declaring the Act not to be retroactive.

The question has since risen in my mind whether it could be construed to have such an effect. I take it that the remedy afforded either party for the enforcement of the obligation of the contract made, and entered into, formed a part of the contract to such an extent that it could not be destroyed or materially affected by subsequent legislation, without impairing the obligation itself, and that no statute could be upheld which would go to this length. There was a case, an American one, *Swift vs Fletcher*, 6 Minn. Rep. 560, and another case, *Skalack vs. Harmon*, 6 Minn. 255, in which a statute undertook to compel a mortgagee to elect whether to proceed against the debtor, or seek satisfaction from the security, and in case of his choosing the former, releasing the latter. This statute was held void for the reason that it deprived the creditor of the remedy given by the law at the date of the contract.

When this Act of our legislature came into force on the 1st July, could it be said that contracts entered into prior to that date, for which certain remedies existed, namely, the right to follow certain properties of the debtor by execution, could be impaired by the statute. The ideas of the validity of contract and the remedy are inseparable, and both are parts of the obligation.

The American law on the subject seems to be:—

"To render an interference with the remedy of such a character as to amount to an impairment of the obligation, it is not essential that there should be an utter destruction of the same.

"If the law so changes the remedy that it does not leave a party any substantial means of enforcing the contract, according to the courts of justice as it existed at the time the contract was made, it is a law impairing the obligation."

Any law of this nature there would be held to be unconstitutional.

I may say concerning the present law that I have made very careful inquiry throughout the country to find if any prejudicial effect on the right of creditors has been caused by its enactment; and I have found none. On the contrary, obligations have been met this present year with greater promptness than in the year preceding. The Act is generally commended by the whole farming community. I think your own experience will bear me out, that where a party does not intend to meet his obligations, he can easily find some method of placing his property beyond the control of his creditors; and that credit must rest mainly upon the personal honour of the man who obtains it. If the present Act curtails the credit system, I do not think the country will suffer any loss through it; but even in this direction I fail to find a single case where the extent of the exemptions has prevented any man from obtaining reasonable credit. By giving some measure of protection, farmers are enabled better to meet their obligations than formerly.

I send you a copy of the Act, and you might discuss the matter with Sir Alexander Campbell. If you consider that the Act has a retroactive effect, and would affect remedies arising under contracts entered into prior to the time the Act came into force, and further consider that it would be wise to get rid of the retroactive effect, I will introduce a bill for that purpose at the coming session. I am, however, inclined to the opinion that the Act has not the effect ascribed to it. No case so far has been brought into our courts.

I have, &c.,

C. E. HAMILTON,

*Attorney General.*

*The Hon. Minister of Justice to Hon. Attorney General Hamilton.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd December, 1885.

SIR,—I am in receipt of your letter of the 27th ultimo, referring to an Act passed at the last session of the Manitoba legislature, under the title of chapter 17: "An Act respecting the Administration of Justice."

In stating the position that a statute could not operate to impair existing obligations, and that one having such an operation would be deemed void, I think you have not given due weight to the distinction which exists in that respect between the constitution of the United States and that of Canada.

The cases which you refer to, and many others in the same direction, depend upon the provision of the constitution of the United States, which restricts state legislatures from passing Acts having tendency to impair contractual obligations. Such statutes are void in the United States only in consequence of that provision, which does not form part of our constitution.

In my opinion the exemptions created by the Act in question would prevail against any process issued after its coming into force, but whether I am right in that view or not, and without committing myself to any course in regard to the application for disallowance, I would like to express strongly the hope that the intimation which you gave to my predecessor would be carried out, and the exemptions made inapplicable to debts incurred prior to the passage of the Act in question.

I have, &c.,

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th January, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th January, 1887.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to submit his report upon the statutes passed by the legislature of the province of Manitoba in the session held in the year 1885.

(1.) Chapter 15 is an Act respecting the Court of Queen's Bench.

By the 9th section the court is given jurisdiction among other things to decree the issues of letters patent from the Crown to rightful claimants.

This provision would be wholly unobjectionable if limited to the Crown in the right of the province of Manitoba, and perhaps that is the fair interpretation of it. It would appear to be in excess of the powers of the legislature of Manitoba, if intended to give the court authority to decree the issue of letters patent from the Crown in the right of the Dominion.

By the 10th section the court is given jurisdiction in certain cases to decree alimony, and it might, the undersigned thinks, be contended that this was a matter incident to marriage and divorce, which is exclusively within the legislative authority of the Parliament of Canada.

By section 14, the precedence and rank of the chief justice and the other judges of the court are prescribed, and by the 16th section the judges of the court are authorized to exercise jurisdiction in the territories under authority of your Excellency, or of any Act of the Parliament of Canada.

All the provisions to which attention has been called are contained in previous statutes of Manitoba, and, having directed attention to them, the undersigned recommends that the Act be left to its operation.



(2.) Chapter 17 is an Act respecting the Administration of Justice.

By the 117th section of this Act provision is made to exempt certain real and personal estate from seizure under writs of execution issued out of any court in the province.

A large number of petitions were received praying for the disallowance of this Act, on account of the provisions of this section, it being alleged that the exemptions were so great that the Act was unjust in its operation. It is clear, however, that the Act in this respect is within the legislative authority of the legislature of Manitoba, and as that legislature at its last session amended the section in question, so that its provisions would not be retroactive, the undersigned is of opinion that the Act, so far as this section is concerned, should be left to its operation.

Sections 116, 177, 184, 192, 194, 196, and 197 contain provisions respecting juries both in civil and criminal proceedings.

It has hitherto been the policy of the Parliament of Canada in its legislation respecting the criminal law to adopt the legislation in each province respecting juries, so far as the same is consistent with the special legislation of the Parliament of Canada on that subject, and in view of this the undersigned does not think it necessary to examine too closely into the provisions of the section referred to.

If and so far as, they are inconsistent with the special legislation of the Parliament of Canada, they will have no force, and so far as they are consistent thereunto, they are recognized by the legislation of Canada.

The undersigned therefore recommends that chapter 17, intituled: "An Act respecting the Administration of Justice," be left to its operation.

(3.) Chapter 18, intituled: "An Act to amend Chapter 37 of the Consolidated Statutes of Manitoba," relates to certain exemptions from execution in proceedings in equity, and stands in a position similar to that of section 117 of the Act last referred to.

The undersigned recommends that this Act be left to its operation.

(4.) Chapter 20 purports to be "An Act respecting Promissory Notes and Bills of Exchange," but it is really an Act respecting evidence, and on that ground the undersigned recommends that it be left to its operation. It is, however, unfortunate that it should be entitled "An Act respecting Promissory Notes and Bills of Exchange," in view of the fact that this a subject within the exclusive legislative authority of the Parliament of Canada.

(5.) Chapter 26. "An Act to consolidate and amend the Acts relating to Town Corporations."

In recommending that this Act be left to its operation, the undersigned desires to observe that as in similar cases, to which attention has frequently been called, the legislature in defining the powers of corporations, has included some which are at least of doubtful authority.

(6.) Chapter 28, "An Act respecting real property in the Province of Manitoba."

Section 146 makes provision for the punishment of certain offences against the Act which in some respects appear to trench upon the criminal law.

(7.) Chapter 41, "An Act to amend Chapter 58, Consolidated Statutes of Manitoba, and Chapter 15 of 46 and 47 Victoria, of Statutes of Manitoba."

By the 2nd section it is provided that the superintendent of the Manitoba asylum for the insane shall not be compelled in certain cases to obey the subpoena in any case, civil or criminal. So far as this affects procedure in criminal cases, it is *ultra vires* of the legislature of Manitoba.

Section 5 also appears in some respects to trench somewhat upon the criminal law.

(8.) The undersigned has submitted separate reports in respect of chapter 2, intituled: "An Act respecting the Lieutenant-Governor and his deputies;" and chapter 45, intituled: "An Act to incorporate the Rock Lake, Souris Valley and Brandon Railway Company."

(9.) The undersigned having carefully considered the other Acts passed by the legislature of the province of Manitoba in the session held in the year 1885, chapters 1, 3 to 14, 16, 19, 21 to 25, 27, 29 to 40, 43, 44, 46 to 55, recommends that they be left to their operation.

The undersigned further recommends that the substance of this report, if approved be communicated to the Lieutenant-Governor of Manitoba for the information of his advisers.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice upon Chapter 45, approved by His Excellency the Governor General in Council on the 22nd March, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th January, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that, by chapter 45 of the Acts passed by the legislature of the province of Manitoba in the year 1885, provision was made for the incorporation of the Rock Lake, Souris Valley and Brandon Railway Company. *Disallowed Mar 20/87*

By the 2nd section the company are authorized to construct and operate a railway and electric telegraph from a point on the international boundary, within ranges 9 and 12, west of the first principal meridian, in the province of Manitoba, and running thence north-westerly to a point in or near the city of Brandon,

The contract dated 21st October, 1880, made between the government of Canada and the Canadian Pacific Railway Company, contains the following clause :—

"15. For twenty years from the date thereof, no line of railway shall be authorized by the Dominion Parliament to be constructed south of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run south-west or to the westward of south-west, nor to within fifteen miles of latitude 49, and in the establishment of any new province in the North-west Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period."

By an Act of Parliament, 44 Victoria, chapter 14, intituled : "An Act to provide for the extension of the Boundaries of the Province of Manitoba," and by an Act of the legislature of Manitoba, 14 Victoria, chapter 11, intituled : "An Act for the Extension of the Boundaries of the Province of Manitoba," it is provided as follows :—  
" (1.) The said \* \* \* and territory thereby added to the province of Manitoba, shall be subject to all such provisions as may have been or shall hereafter be enacted, respecting the Canadian Pacific Railway, and the lands to be granted in aid thereof."

In 1882 the Acts of the legislature of the province of Manitoba passed in the years 1881, and 1882, which are mentioned in the annexed schedule, were disallowed as being in conflict with the policy of the government, confirmed by parliament to prevent as far as possible the diversion of the trade of the North-west Territories from the railway system of Canada to the railway system of the United States.

With respect to the General Railway Act of Manitoba, 45 Victoria, chapter 30, it was also pointed out that in order that the Act should conform to the legislation of parliament in regard to the Canadian Pacific Railway, provision should have been made that no company hereby incorporated should be authorized to construct a line of railway south of the Canadian Pacific Railway, from any point at or near that railway, unless the line runs south-west or to the westward of south-west, and terminated at a point distant at least fifteen miles from the 49th parallel of latitude.

In 1883 the legislature of Manitoba again passed a general Act to encourage the building of railways in that province, 46 and 47 Victoria, chapter 49, in which provision was made for the incorporation of railway companies by the Lieutenant-Governor in Council. To meet the objection taken to the corresponding Act of 1882, it was, however, provided that, in the added territory, no line of railway should be authorized to be constructed south of the Canadian Pacific, from any point at or near the Canadian

Pacific Railway, except such line as should run south-west or to the westward of south-west and not be within fifteen miles of latitude 49.

Notwithstanding that this Act was left to its operation, and the fact that except in the added territory, the Lieutenant-Governor of Manitoba in Council could, by letters patent, incorporate a railway company to construct a railway anywhere within the province, the Acts of the legislature of that province, chapters 68 and 70, respectively and intituled, "An Act to incorporate the Emerson and North-western Railway Company," and "An Act to amend an Act to incorporate the Manitoba Central Railway Company and amending Acts," were, on the 22nd day of March, 1886, disallowed for the same reasons that the Railway Acts previously mentioned were disallowed.

The Act now under consideration (48th Victoria, chapter 45) is, the undersigned thinks, within the competency of the legislature of Manitoba, but in view of the facts stated, he thinks it desirable that a report should be obtained from the Minister of Railways and Canals upon the question as to whether or not the Act should be disallowed on grounds affecting the general policy of the government.

All of which is respectfully submitted.

JNO. S. D THOMPSON.

*Minister of Justice.*

#### SCHEDULE.

44 VICTORIA, 1881.

Chap. 37 : "An Act to incorporate the Winnipeg South-eastern Railway Company."

Chap. 38 : "An Act to incorporate the Manitoba Tramway Company."

Chap. 39 : "An Act to incorporate the Emerson and North-western Railway Company."

45 VICTORIA, 1882.

Chap. 30 : "An Act to encourage the building of Railways in Manitoba."

*Order in Council disallowing Chapter 45, published in the Canada Gazette on the 26th day of March, 1887, Vol. XX. No. 39, page 1751.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 13th January, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th January, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that by chapter 2 of the Acts of the legislature of the province of Manitoba, 48 Victoria (1885), intituled: "An Act respecting the Lieutenant-Governor and his Deputies," it is provided :

(1.) That the Lieutenant-Governor and his successors in office shall be a corporation sole, and that all bonds, recognizances, and other proceedings at law, required to be taken to him in his public capacity, shall be taken to him and his successors by his name of office, and may be sued for and recovered by him or his successors in his or their name of office as such, and the same shall not in any case go to or vest in the persons of, or representatives of the Lieutenant-Governor during whose term of office the same were so taken.

(2.) That the Lieutenant-Governor may with the advice and consent of the Executive Council, from time to time appoint any person or persons jointly or severally to be his deputy or deputies within any part or parts of the province, for the purpose of signing or executing marriage licenses, money warrants, letters patent of incorporation, licenses to incorporate companies, societies or associations to carry on business in the province, and commissions under any Act of the legislature of the province of Manitoba.



By the 1st item of the 92nd section of "The British North America Act," it is provided that the legislature of a province shall have exclusive legislative authority in relation to the amendment of the constitution of the province, except as regards the office of Lieutenant-Governor.

It may be within the competency of the legislature to provide that any bond, recognizance or other proceeding required to be taken to the Lieutenant-Governor in his public capacity shall be taken to him and his successors by his name of office, and that they may be sued for and recovered by him or his successors in his or their name of office as such, and that the same shall not in any case go to or vest in the person or representative of the Lieutenant-Governor during whose term of office the same were so taken, but on the other hand the provision which constitutes the Lieutenant-Governor and his successors a corporation sole is one, the undersigned thinks, which relates to the office of Lieutenant-Governor.

In the same way, no doubt, the legislature has large powers with respect to marriage licenses, money warrants, letters patent of incorporation, licenses, and commissions, which are issued by virtue of some law of the province, but in the same way the provision which authorizes the Lieutenant-Governor to appoint a deputy or deputies for him, is one which also relates to the office of Lieutenant-Governor.

In these respects the undersigned thinks the Act is not within the legislative authority of the legislature of Manitoba, and for that reason he recommends that the Act be disallowed.

JOHN D. THOMPSON,  
*Minister of Justice.*

*Order in Council disallowing Chapter 2, published in the Canada Gazette on the 15th day of January, 1887, Vol. XX., No. 29, page 1352.*

## MANITOBA, 49TH VICTORIA, 1886.

## 4TH SESSION—5TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th April, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th April, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report on the Acts passed by the legislature of Manitoba in the session held in 1886, authentic copies of which were received by the Secretary of State on the 3rd day of February last.

By the 4th and 5th sections of chapter 5, intituled: "An Act respecting probate and administration," provision is made for the administration of the estate of persons dying intestate, without any known heir at law or next of kin. In his report of the 25th of August 1885, on an Act of the same legislature, 47 Victoria, chapter 26, intituled, "An Act respecting Escheats and Forfeitures and Estates of Intestates," the Minister of Justice pointed out that the case of the Attorney General of Ontario *vs.* Mercer (L. R. 8, App. Cases, 767), was not a decision in favour of Manitoba with respect to real property escheating for want of heirs, and that no decision had been arrived at in respect of personal estate which escheats for want of next of kin. By reference to the report referred to and the Order in Council passed thereon, it will also be seen that in disallowing the Act last mentioned, your Excellency informed the Lieutenant-Governor of Manitoba of the readiness of your government to join with his Honour's government in submitting the questions at issue to the courts for decision. To this offer so far as the undersigned is aware, no answer has been made. The undersigned sees no objection to allowing the provincial authorities to administer such estates, pending a settlement of the legal question involved, if steps are taken to obtain a decision, and the interests of Canada are not prejudiced. The provision leaving the disposition of such estates to the Attorney General of the province should be repealed, and it should be provided that pending the decision of the question as to whether such estates belong to the Crown, in the right of the Dominion or of the province, no final disposition shall be made thereof, without the consent of your Excellency in Council and of the Lieutenant-Governor in Council. If the sections referred to are so amended, and the government of the province consent to a reference of the question to the supreme court for hearing and consideration, the undersigned would advise that the Act be left to its operation, but otherwise that it be disallowed.

The 49th section of chapter 6, intituled: "An Act respecting the Manitoba Asylum for the Insane and the confinement of persons therein," is a re-enactment of 48 Victoria, chapter 41, section 2, to which the undersigned called attention in his report of 10th January, 1887. From section 49 is omitted the provision that the superintendent of the asylum should not be compelled to obey the subpoena of any court in any criminal case; but the exception in the case of a capital offence which is now meaningless, is retained.

The provision of the 3rd section of chapter 15, intituled: "An Act respecting County Court Judges" by which it is enacted that a county court judge "shall not do certain acts under the penalty of forfeiture of office" is *ultra vires*. The section should be amended by striking out the words quoted.

Section 233 of chapter 29, intituled: "An Act respecting the Election of Members of the Legislative Assembly," deals with matters the subject of the criminal law. It is unnecessary and should be repealed. See R.S.C., c. 168, s. 55.

By chapter 41, intituled: "An Act to further amend the Marriage License Law," the Consolidated Statutes, chapter 8, section 75, is amended as follows, the words *underlined* indicating the amendment: "The marriage license may be issued from the office of the provincial treasurer under hand and seal of the Lieutenant-Governor, *or his deputy duly licensed in that behalf*, and shall be furnished, &c." The Act authorizing the Lieutenant-Governor to appoint deputies having been disallowed, this Act should, the undersigned thinks, be repealed.

Chapter 45 is "An Act respecting Assignments for the Benefit of Creditors." There is, the undersigned thinks, great doubt as to the authority of a legislature to enact such laws as these, as they are in the nature of Insolvent Acts. Similar Acts have, however, been allowed to go into force in other provinces, and the undersigned is of opinion that this Act should also be left to its operation.

Chapter 52 is "An Act to consolidate and amend the laws relating to municipal corporations." By sections 347 and 349 the power of municipal and civic councils to make by-laws are defined. Some of these are open to the objection which has so frequently been made in similar cases.

Sections 366 and 367 deal with criminal law, and are, the undersigned thinks, unnecessary and should be repealed. See R.S.C., c. 157, s. 8; c. 162, s. 34, &c.; c. 174, ss. 28 *et seq.*

Section 734 is open to the same objection. See R.S.C., c. 164, s. 55.

By the 2nd section of chapter 59, intituled: "An Act to incorporate the Saskatchewan and Western Railway Company," the company is given power to construct a railway on some point on the Manitoba and North-western Railway, at or near the town of Minnedosa, to be fixed by the Lieutenant-Governor in Council, to Rapid City, and thence westerly to the Assiniboine River within the province of Manitoba. To this there is no objection; but there is added this provision:—"And also to build and operate such branch lines of railway as may from time to time be approved by the Lieutenant-Governor in Council." This power to build branch lines should be subject to the provision contained in 46-47 Victoria (Manitoba) chapter 47, that no such line shall, in the "added territory," be constructed south of the Canadian Pacific Railway, from any point at or near such railway, except such line as shall run south-west or to the westward of south-west, and not within fifteen miles of latitude 49°, or such other limitation of the power to build branch lines should be enacted as would prevent the company building in contravention of the provision referred to.

The 2nd section of chapter 65, intituled: "An Act to incorporate the Shell River Railway Company," is open to the same objection, and should be amended in the same way.

1. That the substance of this report, if approved, be communicated to the Lieutenant-Governor in Council of the province of Manitoba.

2. That your Excellency defer action respecting chapters 5, 15, 29, 41, 52, 59 and 65.

3. That the Acts, the chapters of which are given in the annexed schedule, be left to their operation, and that the Lieutenant-Governor be informed thereof.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

#### SCHEDULE.

Chapters 1 to 4, 6 to 11, 16 to 19, 22 to 51, 53 to 58, 60 to 64, 66 to 72.



## MANITOBA—50TH VICTORIA, 1887.

## 5TH SESSION—5TH LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th July, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 4th July, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has had under consideration the following Acts passed by the legislature of Manitoba at its last session :

(1.) Bill No. 5—"An Act respecting the construction of the Red River Valley Railway," which received the assent of the Lieutenant-Governor on the 1st of June instant.

(2.) Bill No. 81—"An Act to amend the Public Works Act of Manitoba," which received the assent of the Lieutenant-Governor on the 10th June instant.

By the Act respecting the construction of the Red River Valley Railway, the government of Manitoba is given authority among other things to construct a line of railway from a point within the city of Winnipeg, to a point in or near the town of West Lynne.

By the Act to amend the Public Works Act of that province, the Minister of Public Works is given authority to construct any public work at the expense of the province, of which the construction is assigned to him by the Lieutenant-Governor in Council, and whether such public work is authorized by the statutes now in force or not. It is also provided that there may be raised by loan upon the credit of the province such sums as may be necessary, bearing interest at a rate not exceeding 5 per cent, for the purpose of constructing such public works.

It is evident that under such an Act a railway such as the Red River Valley Railway could be constructed by the Minister of Public Works as a public work of the province of Manitoba. It is evident, also, that each of the Acts referred to is in conflict with that policy of the Parliament and of the government of Canada, reconfirmed at the last session of Parliament, by which it is sought to prevent the diversion of trade from the railway system of Canada to the railways of the United States.

In addition to this fundamental objection, the Act respecting the construction of the Red River Valley Railway is, the undersigned thinks, open to the following objections :—

(1.) By section 8, subsecs. 2, 4, 6, and 7, and sections 12 and 22, authority is given, among other things, to enter upon lands and take possession thereof, and to appropriate so much of such public lands as is deemed necessary for the purposes of the railway, and also to take therefrom earth, trees and other materials.

The public lands of Manitoba are for the most part, and with the exception of those especially transferred to the province, vested in Her Majesty in the right of the Dominion of Canada, and it is not competent, the undersigned thinks, for the legislature of that province to authorize any one to enter upon, and to appropriate for any purpose, the lands so vested in her Majesty in the right of the Dominion of Canada.

They are part of the public property of Canada, which, by the 91st section of the British North America Act, 1867, is exclusively within the legislative authority of the Parliament of Canada, and in respect of which, therefore, the legislature of the province of Manitoba has no legislative authority.

(2.) By section 8, subsection 9, authority is given to connect the Red River Valley Railway with any other railway at any point on its route ; and provision is

made for determination by arbitrators, of any difference that may arise in respect of such connection.

This power if attempted to be exercised in respect of any railway constructed under the authority of an Act of the Parliament of Canada would lead to a conflict of law and authority, as the Parliament of Canada has made provision with reference to the same subject (See R. S. C., c. 109, s. 6, subsecs. 13 and 14). Again this power if attempted to be exercised in respect to the connection with any railway at the boundary of the province, or with a railway extending beyond the limits of the province, would be in excess of any authority which the legislature of Manitoba could grant, as may be clearly seen by reference to the British North America Act, 1867, sec. 9, clause 10 (a).

It is obvious that the objection pointed out in reference to the legislature of Manitoba purporting to give power to enter upon and appropriate public lands vested in Her Majesty in the right of the Dominion of Canada, applies equally to the Act to amend the Public Works Act of Manitoba, especially if an attempt were made to use that Act for the construction of railways within that province, as indeed it must apply to every Act by which the legislature of that province purports to give authority to enter upon such lands.

Attention, perhaps, has not in the past been drawn as much as it might have been to this point, because the government of Canada was not unwilling to allow the public lands of Canada to be used for the purpose of railways, the construction of which the government thought was in the public interest; but now that a difference of opinion has arisen between the two governments as to what railways it is in the public interest to construct in that province, it is but right to call attention to the difficulties which surround the legislature of that province in attempting to deal with the construction of railways through lands over which it has no legislative authority whatever.

For these reasons the undersigned respectfully recommends that the Acts herein mentioned be respectively disallowed.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Order in Council disallowing the above Acts (Bills No. 5 and 81) published in the Canada Gazette on the 16th day of July, 1887, Vol. XXI., No. 3, page 92.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th July, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th July, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has had under consideration an Act passed by the legislature of the province of Manitoba at its last session (Bill No. 68) intituled "An Act for further improving the Law," which received the assent of the Lieutenant-Governor on the 10th day of June last, and an authentic copy of which was received from the Lieutenant-Governor by the Secretary of State for Canada on the 4th day of July instant.

By the 7th section of this Act it is provided that all persons being engaged as contractors, sub contractors, servants, employees or workmen or otherwise howsoever on the construction of any public work, or belonging to this province, or in the doing of any work under the sanction expressed in writing of the Minister of Public Works or the Commissioner of Railways of this province, in pursuance of any statute or act or resolution of the legislative assembly of this province, shall be taken and deemed in all courts of justice to be the servants of Her Majesty, and such sanction of the Minister of Public Works or of the Commissioner of Railways of the province for the time being shall be taken and deemed in all courts of justice to be full and competent authority

and justification to such person or persons for the construction or doing of such work as aforesaid, and all other acts and things purporting by such statute, act or resolution to be authorized to be done by or on behalf of such minister or commissioner for the purposes thereof.

The immunity from responsibility and liability for their acts, which by this provision is given to contractors and persons employed in the construction of any public work in the province of Manitoba or in doing any work under the direction of the Minister of Public Works or of the Commissioner of Railways of that province is of such an unusual and extraordinary character and constitutes such a manifest interference with private rights that the undersigned is of opinion that the Act should be disallowed without further delay.

He, therefore, recommends that the Act of the legislature of the province of Manitoba, passed in the session held in the year 1887, No. 68, and intituled: "An Act for further improving the Law," be disallowed.

JOHN A. MACDONALD,  
*For Minister of Justice.*

*Order in Council disallowing the above Act, (Bill No. 68,) published in the Canada Gazette, on the 23rd day of July, 1887, Vol. XXI., No. 4, page 140.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 9th August, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th August, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has had under consideration the following Acts passed by the legislature of Manitoba at its last session :—

1. Bill No. 1, "An Act to incorporate the Manitoba Central Railway Company."
2. Bill No. 2, "An Act to incorporate the Winnipeg and Southern Railway Company."
3. Bill No. 54, "An Act to incorporate the Emerson and North-western Railway Company."

The undersigned has also in the same connection had under consideration the report of the Minister of Railways and Canals, dated the 4th July, respecting the charter of the Manitoba Central Railway Company, and the Winnipeg and Southern Railway Company.

The Act to incorporate the Manitoba Central Railway Company and the Act to incorporate the Winnipeg and Southern Railway Company, received the assent of the Lieutenant-Governor on the 19th April last, and authentic copies thereof were received by the Secretary of State on the 2nd July last.

The Act to incorporate the Emerson and North-western Railway Company received the assent of the Lieutenant Governor on the 10th June last, and an authentic copy therefore was received by the Secretary of State on the 4th July last.

By the Act to incorporate the Manitoba Central Railway Company, the company is authorized to construct a railway "commencing at a point at the city of Winnipeg, thence running southerly to the 49th parallel of north latitude, known as the international boundary, to a point in or near township 1, ranges 2 and 3, east of the first principal meridian, in the province of Manitoba, with branches extending from a point or points on the said line of railway not more than twelve miles northerly from the said international boundary to the said international boundary, at or near the towns of Gretna and Emerson, and also a line of railway extending from a point at the city of Winnipeg, and running westerly to a point at the town of Portage la Prairie."

By the Act to incorporate the Winnipeg and Southern Railway Company, the company is given authority to construct a line of railway "commencing at Winnipeg



and running south or south-east to the international boundary of Canada, and not extending beyond the province of Manitoba."

By the Act to incorporate the Emerson and North-western Railway Company, the company is given authority to construct a railway "from a point on the Red River at or near St. Jean Baptiste, in a north-westerly direction to the town of Portage la Prairie and also a branch line from some point on the said line of railway in a westerly or north-westerly direction to a point on the western boundary of the province of Manitoba."

Adverting to his report of the 4th July last, in reference to the Act respecting the construction of the Red River Valley Railway, and the Act to amend the Public Works Act of Manitoba, and being of opinion that the general objections taken in his report in regard to the Acts last mentioned apply equally to the Acts now under consideration, the undersigned respectfully recommends that they be disallowed.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Minister of Railways and Canals.*

DEPARTMENT OF RAILWAYS AND CANALS, OTTAWA, 4th July, 1887.

The undersigned has had under consideration the despatch dated 4th of May last' from his Honour the Lieutenant-Governor of Manitoba, covering an address presented by the legislative assembly of that province, praying that assent be given to the charters of the "The Manitoba Central Railway Company" and "The Winnipeg and Southern Railway Company," the said despatch having been referred to him from the hon. the Privy Council for that purpose.

In dealing with this matter, the undersigned is guided by the following facts:—

1. By the 15th clause of the Canadian Pacific Railway Act, 44 Victoria, chapter 1, it is laid down as follows:—"For 20 years from the date hereof, no line of railway shall be authorized by the Dominion Parliament to be constructed south of the Canadian Pacific Railway from any point at or near the Canadian Pacific Railway, except such line as shall run south-west, or to the westward of south-west; nor to within fifteen miles of latitude 49. And in the establishment of any new province in the North-west Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period.

2. That the policy so adopted has since been maintained by the government, and that at the last session of parliament (1887) the House of Commons rendered the view taken in this matter in 1881 and carried out by the government.

As the charter of both companies to which assent is asked, violates the essential conditions of the above cited stipulation of the Canadian Pacific Railway Act, the undersigned, not being able to advise the disregard of the agreement made with that company in so important a particular, cannot recommend that assent be given to the charters in question.

Respectfully submitted,

J. H. POPE,  
*Minister of Railways and Canals.*

*Order in Council disallowing the Acts above mentioned (Bills Nos. 1, 2 and 54), published in the Canada Gazette, on the 15th day of August, 1887, Vol. XXI, No. 7, page 405.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 29th September, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd July 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honour further to report upon the acts of the legislature of the province of Manitoba passed in the year 1887, and begs to recommend that the Acts passed during that session, and being the chapters 3, 5 to 7, 10 to 19, 21 to 27, 28, 29 to 46, 48 to 60, 62 to 65 inclusive, be left to their operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd July 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honour further to report upon the the following Acts of the province of Manitoba passed in the year 1887, namely, chapters 8, 9, and 20.

Chap. 8. An Act to amend cap. 45 of 49 Victoria. The original act of which this chapter is an amendment is, in the opinion of the undersigned, substantially an Insolvent Act, and many of its provisions are therefore, *ultra vires* of a provincial legislature. The original act, however, having been left to its operation and the question of its validity, as well as the passing of similar enactments in other provinces being now before the superior courts of the Dominion for adjudication, it is not necessary, in the opinion of the undersigned, that this amending act should be disallowed.

The undersigned, therefore recommends that the same be left to its operation.

Chap. 9. An Act respecting County Courts. Section 9 of this act makes provision for the appointment of a deputy in the event of the illness or the unavoidable absence of a county court judge, but the undersigned begs to call attention to this section and to state that in his opinion, a provincial legislature has no power to define or limit the qualifications of any county court judge, that being an infringement upon the appointing power of the Governor General under the provisions of the British North America Act.

Section 92 of the said Act provides as follows :

"In case any person in any examination wilfully and corruptly swears (or affirms) falsely in any matters where an oath affidavit or affirmation is required or allowed in this Act, he shall be liable to be ordered into custody and to be prosecuted for the said offence according to law : "

This section relates to a matter of criminal law, as it declares that a person committing perjury may be proceeded against, which is not, in the opinion of the undersigned, within the competency of a provincial legislature. It seems, however, only to be declaratory of the existing laws.

Section 231 of this Act provides for the punishment of persons assaulting officers of the law in the discharge of their duty. The offence referred to in this section is provided for by chapter 162 of the Revised Statutes of Canada. Section 34, and the section itself is in the opinion of the undersigned an infringement upon the powers of the parliament of Canada in this respect. The undersigned, however, is of opinion that the whole act may be left to its operation, but the attention of the Lieutenant-Governor of Manitoba should be called to the sections referred to with a view that his advisers may be moved to promote legislation respecting them.

Chapter 20, an "Act respecting the Treasury department and the Auditing of the Public Accounts."

Section 55 of this Act provides as follows :

"If any revenue officer at any time refuses or fails to pay over or deliver up any chattel, money or valuable security belonging to Her Majesty, to any officer or person, who, being duly authorized by the Lieutenant-Governor in council demanded the same, he shall for every such refusal or neglect incur a penalty of one thousand dollars, or in default of payment be liable to imprisonment for a period not exceeding twelve months."

This section is in conflict with the provisions of chapter 164 of the Revised Statutes of Canada, section 35: "The Larceny Act," and is an encroachment upon the criminal law. The undersigned, however, does not recommend that the power of disallowance be exercised in respect of the whole Act which is an Act very largely in the public interest, but that the attention of the Lieutenant-Governor be called thereto with a view to its repeal or appropriate legislation.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

CORRESPONDENCE EXCHANGED WITH THE IMPERIAL GOVERNMENT CONCERNING THE DISALLOWANCE OF THE RAILWAY ACTS OF MANITOBA.

*The Governor General to Secretary of State for Colonies.*

GOVERNMENT HOUSE, OTTAWA, 4th January, 1888.

SIR,—I have the honour to inclose herewith copies of the following documents:—

(1.) Despatch addressed by the Lieutenant-Governor of the province of Manitoba to the Dominion government transmitting a memorial to Her Majesty in Council upon the subject of the disallowance of the Red River Valley Railway Act, and other railway charters; the memorialists praying to be heard before Her Majesty in Council in reference to these disallowances.

(2.) An approved report of the Privy Council of Canada inclosing a memorandum, which has been prepared by my ministers of the Interior and of Justice, upon the matters dealt with in the above mentioned memorial.

I have, &c.,

LANSDOWNE.

*Petition of Executive Council of Manitoba to Her Majesty the Queen.*

*To Her Most Excellent Majesty in Council:*

MAY IT PLEASE YOUR MAJESTY,—The memorial of the Executive Council of the province of Manitoba, Dominion of Canada, humbly sheweth:—

1. That it was amongst other things provided by the 16th section of "The British North America Act" that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-western Territory, or either of them into the union, on such terms and conditions in each case as are in the addresses and as the Queen thinks fit to approve, subject to the provisions of said British North America Act.

2. That on address from the Houses of Parliament of Canada, the Queen, by and with the advice and consent of Her Majesty's Most Honourable Privy Council, under



the authority of the said 146th section of "The British North America Act, 1867," did, by Order in Council in that behalf, admit Rupert's Land and the North-western Territory into the union, or Dominion of Canada, and there was formed out of the same, the province of Manitoba, which thenceforth became one of the provinces of the Dominion of Canada, which province of Manitoba was then bounded as follows, that is to say: Commencing at the point where the meridian of ninety-six degrees west longitude from Greenwich intersects the parallel of forty-nine degrees north latitude; thence due west along the said parallel of forty-nine degrees north latitude (which forms a portion of the boundary line between the United States of America and the said North-western Territory) to the meridian of ninety-nine degrees of west longitude; thence due north along the said meridian of ninety-nine degrees west longitude to the intersection of the same with the parallel of fifty degrees and thirty minutes north latitude; thence due east along the said parallel of fifty degrees and thirty minutes north latitude to its intersection with the before mentioned meridian of ninety-six degrees west longitude; thence due south along the said meridian of ninety-six degrees west longitude to the place of the beginning.

3. That the terms and conditions on which Manitoba was admitted into the union and became one of the provinces of the Dominion of Canada are set forth in the Act of the parliament of Canada, 32 and 35 Victoria, chapter 3, and amending Acts, which Acts are styled and known as "The Manitoba Act."

4. That it is provided by the second section of "The Manitoba Act" that on, from and after the said day on which the order of the Queen in Council shall take effect as aforesaid, the provisions of the said British North America Act, 1867, shall, except those parts thereof which are in terms made, or by reasonable intendment may be held to be specially applicable to, or only to affect one or more, but not the whole of the provinces now comprising the Dominion, and except so far as the same may be varied by this Act, be applicable to the province of Manitoba in the same way and to the like extent as they apply to the several provinces of Canada, and as if the province of Manitoba had been one of the provinces originally united by the said Act.

5. That it is amongst other things provided by the 92nd section of the British North America Act that in each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects therein enumerated, and subsections 10, 11 and 16 of said section 92 are in the words following:—

"10. Local works and undertakings other than such as are of the following classes:—

"(a.) Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province;

"(b.) Lines of steamships between the province and any British or foreign country;

"(c.) Such works as, although wholly situate within the province, are, before or after their execution, declared by the parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces;

"(11.) The incorporation of companies with provincial objects;

"(16.) Generally all matters of a merely local or private nature in the province."

6. That the legislature of the province of Manitoba by the said in part recited Acts acquired and ever since has had the undoubted and exclusive power to charter and construct lines of railway situate wholly within the boundaries of Manitoba as above defined, and from any one point to any other point within the province.

7. That by Act of the parliament of Canada, 44 Victoria, chapter 1, intituled: "An Act respecting the Canadian Pacific Railway," a charter of incorporation was granted to "The Canadian Pacific Railway Company," on the terms and conditions in said Act fully set forth.

8. That the 15th clause of said charter is in the words and figures following:—

"15. For twenty years from the date hereof no line or railway shall be authorized by the Dominion parliament to be constructed south of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run south-west or to the westward of south-west, nor to within fifteen miles of latitude 49.

And in the establishment of any new province in the North-west Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period.

9. That while the said Canadian Pacific Railway charter was being discussed, as aforesaid, in the Dominion Parliament, much alarm was occasioned in this province, and public meetings were held protesting against the granting of a monopoly in the province of Manitoba to the Canadian Pacific Railway, and the legislature of this province being then in session, the matter occupied much attention, and the following resolutions were introduced to and unanimously adopted by the legislature on the subject :—

WEDNESDAY, 22nd December, 1880.

“The Hon. Mr. Norquay, seconded by the Hon. Mr. Girard, moved the following :—

“Whereas it appears from a telegram dated 18th December, 1880, addressed by the Right Hon. Sir John A. Macdonald, Premier of the government of Canada, to Thomas Scott, M.P. for Selkirk, that the Canadian Pacific Railway will have power to build branch lines anywhere ;

“And whereas it is further intended, as appears from the publication of the terms on which the Canadian Pacific Railway Syndicate have agreed to construct, equip, maintain and operate the said Canadian Pacific Railway, to grant to the said company the exclusive right of building and operating branch lines of railway to the international boundary between Canada and the United States ;

“And whereas it appears further that the said company have the right of accepting only such alternate sections of land as they may think proper, and it is deemed that the powers intended to be granted to the company would be detrimental to the best interests of the province of Manitoba ;

“And while this House is of opinion that the construction of the Canadian Pacific Railway should be entrusted to a private company, it views with alarm some of the terms of agreement between the government and the syndicate.

“Therefore, be it resolved—

“Whereas it appears, &c., that for the present the Canadian Pacific Railway Syndicate should have given to them power to build only the main line of the Canadian Pacific Railway, and that any other line or branch line should be built by the syndicate or other company only after their obtaining power from time to time from the parliament of Canada to build such line or branch line, and that the main line of the Canadian Pacific Railway shall not be allowed to approach at any point within 15 miles of the international boundary line, and that parliament should not abandon its rights of authorizing the construction of railways in any direction by other companies ;

“That the syndicate shall not have the option of choosing and selecting their lands, but shall be compelled to take alternate sections or townships for their land grant in aid of the construction of the railway, irrespective of the quality of the same.”

THURSDAY, 23rd December, 1880.

On motion of Mr. Ross, seconded by Mr. Drummond, “Resolved,—That in the resolution passed by this House, in reference to the terms of agreement between the Dominion government and the Canadian Pacific Railway Syndicate, it did not commit itself to a limitation of the objectionable terms in the clauses of said contract.”

10. That as fully appears from official reports of the Debates of the House of Commons of Canada for the years 1880 and 1881, when the said last named Act was being discussed in the said parliament of Canada, it was strongly urged on the floor of the House by way of objection to said clause 15 by certain members that it applied to Manitoba, and would prevent the building of railways in Manitoba ; and to such objection the Right Hon. Sir John A. Macdonald, then and still Premier of Canada and leader of the government, among other things, said as follows :

"There will be room for as many railways in that country by-and-by as there are in Europe, and if there be any attempt—the attempt would be futile—on the part of the Canadian Pacific Railway to impose excessive prices and rates, it is folly that would soon be exposed by the construction of rival lines east and west which would open up our country in all directions and prove amply sufficient to prevent the possibility of a monopoly which has been made such a bugbear of by the honourable gentlemen opposite.

"In order to give them a chance, we have provided that the Dominion parliament—mind you, the Dominion parliament; we cannot check any other parliament; we cannot check Ontario; we cannot check Manitoba—shall for the first ten years after the construction of the road, give their own road, into which they are putting so much money and so much land, a fair chance of existence."

And the Hon. Thomas White, then a leading follower and supporter of the Premier and now a member of said Premier's Cabinet and Minister of the Interior, among other things said as follows:—

"But we are told now that because of the fifteen miles clause there never can be any other railway into this country. To what does that apply? Simply to the territories over which the Dominion parliament has control. There is nothing to prevent Manitoba now, if it thinks proper, granting a charter for a railway from Winnipeg to the boundary line. At this very moment there is a company in course of organization to build a railway from Winnipeg to West Lynne on the boundary. And after this agreement is ratified, this provision does not take from Manitoba a single right it possesses: in fact this parliament could not take away those rights. It has the same rights as the other provinces for the incorporation of railway companies within the boundaries of the province itself, and there is nothing to prevent the province of Manitoba from chartering a railway from Winnipeg to the boundary to connect with any southern railway. The only guarantee which this company has under the contract is that their traffic shall not be tapped far west in the prairie section, thus diverting the traffic away from the line, to a foreign line, but there is nothing to prevent a railway being built in Manitoba within the province that would carry the traffic to any railway that may tap it from the American side. That is the position with respect to this matter."

And after these assurances from the government, and on the faith of these assurances, further opposition was withdrawn, and the said clause fifteen passed the House in the form in which it had been introduced as hereinbefore set forth.

11. That as appears from the official reports of the Debates of the House of Commons of Canada for the year 1884, Sir Charles Tupper, Minister of Railways, when urging on the parliament of Canada the granting to the Canadian Pacific Railway Company of a loan of thirty millions of dollars (which loan was granted), amongst other things, said as follows:

"I showed that the present government had adopted the policy of their predecessors in regard to what is called the monopoly in the province of Manitoba; that when the late government undertook to carry on the construction of the Canadian Pacific Railway as a government work, they felt bound to protect traffic of the road from being drawn off to lines to the south of us in the adjoining Republic, and had, consequently, refused to issue a proclamation which would charter lines within the province of Manitoba to connect with American lines to the south. I said that the present government, when we came into power, adopted that policy; that we felt, as our predecessors did, that grappling with so gigantic a work as the construction of the Canadian Pacific Railway, we were bound to adopt every possible means of protecting our own line against having its traffic drawn to lines to the south—and mark you, this was at a time when we did not contemplate at an early day carrying the Canadian Pacific Railway further than Port Arthur. I said further that when we made it obligatory upon the Canadian Pacific Railway Company to extend at once the line north of Lake Superior, giving us an all-rail route from Montreal to the Pacific Ocean, or from Callendar to the Pacific Ocean, we felt obliged to give to that company, upon which we imposed such onerous obligations, all the security that we considered necessary, and that our predecessors in the government had considered necessary for the protection of the Canadian Pacific Railway. But I am glad to be able to state to the House that, although true to that policy, the gov-



ernment refused to give assent to the construction of lines within the province of Manitoba to connect with American railways to the south, such is the evidence presented by the operation of the line so far as it has gone, such is the conclusion arrived at by the Canadian Pacific Railway Company itself in regard to the ability of a through line of the Canadian Pacific Railway to take care of itself, and by the inherent power of its own advantages to maintain its position, notwithstanding any competition to which it may be subjected—although we have no power under the contract, to touch any portion of the country in the North-west Territories, we are now in a position to review and to reconsider the policy of the late government, and the policy of the present government, as to the continued necessity for any long period of protecting the Canadian Pacific Railway against competition. I am glad to be able to state to the House that such is the confidence of the Canadian Pacific Railway Company in the power of the Canadian Pacific Railway to protect itself, that when the line is constructed north of Lake Superior, the government feel it will not be incumbent upon them to preserve the position they have hitherto felt bound to preserve, that of refusing to consent to the construction of lines within the province of Manitoba, connecting it with American railways to the south. I can give no better evidence to the House and to the country of the advanced position which we consider this great enterprise of the Canadian Pacific Railway has attained, than when I say that I feel it is consistent with what we owe to the people of this country and to that great national work, that the government should not deem it incumbent on themselves to pursue the restrictive policy within the province of Manitoba, which we have hitherto been obliged to maintain."

12. That after the passing of said Canadian Pacific Railway Act the legislature of the province did, according to its undoubted right (as hereinbefore referred to) by Acts of said legislature, charter divers railway companies for the purpose of constructing, maintaining and operating lines of railway wholly situate within the province as before defined, yet all of such Acts as chartered a line of railway to be constructed or operated to any point within fifteen miles of the international boundary line have been disallowed and vetoed by the Governor General of Canada in Council, and as the said Canadian Pacific Railway was then incomplete, such disallowance was submitted to rather than in any way impede the completion and rendering permanent of the Canadian Pacific Railway, the same being a national highway.

13. That the said Canadian Pacific Railway has been completed for upwards of 18 months, and has become permanent and probably the strongest railway corporation on this continent.

14. That the province of Manitoba is separated from the markets of Eastern Canada by a distance of from 1,200 to 1,400 miles, and the province has only two outlets, namely, one north of the chain of lakes by way of the main line of the Canadian Pacific Railway, *via* Thunder Bay, and the other south of Lakes Superior and Huron, by way of branches of the Canadian Pacific Railway to Gretna and Emerson, and thence by the St. Paul, Minneapolis and Manitoba Railway, south and east, with which last mentioned railway the Canadian Pacific Railway is in close alliance, and consequently no relief can be expected ther from.

15. That there is no railway competition in the province, the Canadian Pacific Railway Company having a monopoly of the carrying trade of this province.

16. That the depression and discontent arising from lack of railway competition have become so great throughout the entire province that the population almost unanimously demand that railway competition must be procured by the construction of an independent line of railway running from Winnipeg (the capital city of the province) to the southern limit of Manitoba within the province, as defined in "The Manitoba Act," where freight can be transferred to an independent line of railway and thus competition procured.

17. That through an interview had with the Honourable Thomas White, then and now Minister of the Interior, on the 11th of March, A. D. 1887, in the city of Winnipeg, which is reported in the *Daily Manitoban* of the 5th of March as follows:—

"A deputation of representative Conservative citizens waited on Hon. Thomas White, Minister of the Interior, at the Dominion Lands Office, yesterday afternoon,

and had a conference with him on the question of disallowance. Among the gentlemen composing the deputation were, G. F. Galt, R. J. Whitla, F. B. Robertson, W. B. Scarth, M.P., E. P. Leacock, M.P.P., A. V. McLennaghan, J. S. Aikens, G. F. Carruthers, J. B. Mather, J. H. Brock, J. Cosgrave, J. B. McKilligan, F. B. Ross, W. Hespeler, G. J. Maulson, C. Glass, T. Gilroy, H. S. Crotty, and J. R. O'Laughlin."

"Mr. Scarth introduced the deputation to Mr. White, and in doing so urged the discontinuance of the government's disallowance policy, and dwelt strongly on the fact that he had been elected on a pledge to vote against the government on this question.

"A desultory conversation then ensued, during which the sentiments of the deputation were expressed clearly to Mr. White. Mr. Whitla and Mr. Robertson were the principal spokesmen, and they pointed out how highly beneficial it would be to have competing lines of railway running in the country, that a more rapid development of the country would follow, that it would cause a confidence among the people, and give a renewed impetus to the various industries of the country.

"All present were agreed that the time had arrived for the abolishment of disallowance within the old boundaries of Manitoba.

"Mr. White pointed out that when the Act was passed and sent to Ottawa, he had no doubt that the government would give it their attention and that from the strong expressions of opinion from Manitoba and the North-west, in which friends of the government were found to be most emphatic, the probabilities were that the law would be allowed to take its course. He quite appreciated the urgency of the case, and had no doubt that the government would act promptly, when a measure, in the event of one being passed, was submitted to them, so that in the event of the policy of disallowance being abandoned there may be no delay in making the financial arrangements for carrying out the enterprise.

"Mr. Carruthers said that it was expected the local legislature would meet about the 17th of the month, when a charter to build a line of railway to the boundary would be applied for, and as soon as it passed the House the special assent of the Lieutenant-Governor in Council would be requested. The charter would then be immediately transmitted to Ottawa with the request that the government would reply whether or not it would be allowed. Mr. Carruthers asked Mr. White how soon a reply might be expected if this was done.

"Mr. White replied that a reply would be given without delay. He thought that if the government intended to continue their disallowance policy the people should know at once.

"The deputation then withdrew, feeling satisfied from the manner in which Mr. White expressed himself, that no further opposition may be apprehended from the government in respect to allowing a railway to be built to the boundary."

And also through a speech delivered by the said Hon. Thomas White (then and now Minister of the Interior), in the city of Winnipeg, on the 7th day of March, 1887, in reply to an address presented to him by the Junior Conservative Association, in which amongst other things he said as follows:—

"Your address refers to the question of disallowance, and the elections which have recently occurred and the discussions to which they have given rise, have added additional interest to the question. As you are aware, the contract with the Canadian Pacific Railway in no way interferes with the right of the legislature of Manitoba to grant charters within the boundaries of the province as they existed at that time. This was very clearly pointed out during the debate in parliament, when the contract with the syndicate and the charter to the company were granted. It was important, however, on every ground, commercial as well as national, that the Canadian Pacific Railway should be an all-through line on Canadian territory, and that we should not be dependent in any way upon American lines for our traffic with Manitoba and the North-west.

"The question now is, has the time arrived when the policy of disallowance may be safely abandoned? You will not, I am sure, expect me as an individual minister to answer that question. No decision upon it has been arrived at by the government that I am aware of, and until that decision has been arrived at it would be unfair to you

and improper on my part to express a definite opinion. I have always regarded the policy as a temporary one. I have always regarded the statement of Sir Charles Tupper, when Minister of Railways, and when urging the thirty million dollar loan upon the acceptance of parliament, as embodying the views of the government. The statement was that the granting of that loan would secure the completion of the railway some four or five years before the time fixed in the original contract, and thus render possible the abandonment of the policy of disallowance at an earlier period. But whether that period has yet arrived must be left for the determination of the government when the question comes formally before it. This I think I have a right to ask you to assume, that the decision will be come to, not in the interests of any railway corporation, but in the interest of the country, including those of Manitoba and North-west Territories.

"Should the decision of the government be in the sense that the people of Manitoba evidently hope it may be, I am quite sure that the Canadian Pacific Railway will be able to hold its own in the competition to which it may be subjected. (Hear, hear.) It occupies a position of special advantage over any other possible line to the south of it. It is shorter in mileage, and it is for its entire length under one management, an advantage the influence of which can hardly be over estimated. Moreover, competition, resulting in creating a new interest in the development of Manitoba and the Territories, would soon create new and enlarge trade. That has been the result everywhere. In Ontario, for instance, where the Canadian Pacific Railway has invaded territory which the Grand Trunk Railway Company was disposed to regard as its exclusive possession, the result has been to enormously increase the general traffic, an increase in which the Grand Trunk has become a sharer. Every one must rejoice to see that the traffic returns of that railway, to which Canada has been so much indebted in the past, are showing a steady weekly increase, and I think I am right in saying that increase has come chiefly from Canadian freight and passengers. (Cheers.) There will be trade enough in Manitoba and the North-west to afford profitable traffic returns for both the Canadian Pacific and the Grand Trunk Railways, if the latter should find entrance here, and it would be no small advantage to the country as a whole to have the large interests connected with these two great corporations enlisted in the work of developing the great west instead of, as there is too much reason to fear has been the case in the past, as to one of them, devoted rather to the prevention of that development."

The people of Manitoba were led to believe that the policy of disallowance of Manitoba railway legislation would not be further continued.

18. That the legislature of Manitoba passed at the last session thereof (as herein-after more fully set forth), "An Act to incorporate the Manitoba Central Railway Company," and "An Act to incorporate the Winnipeg and Southern Railway Company," which were assented to on the 19th day of April, 1887, and were transmitted to the Secretary of State forthwith thereafter, with the request that the Governor General in Council would pass upon them immediately, yet the Governor General in Council did not pass upon said two Acts until the 9th day of August, 1887.

19. That the legislative assembly of this province as a consequence were, in the meantime, led to believe that the representations made by the said Hon. Thos. White, in Winnipeg, as aforesaid, were being adopted by the Dominion executive, and that the rights of the province to charter lines of railway within the old province of Manitoba, would not in future be interfered with.

20. That the legislature of this province in that belief, and in compliance with the urgent desire of the people throughout the province for the purpose of procuring railway competition by the construction of an independent line of railway, did, at the said last session of the said legislature (which session was held in the months of April, May and June, 1887), unanimously pass an Act, intitled: "An Act respecting the construction of the Red River Valley Railway," and being chapter 4 of the Acts of this province, passed in the fiftieth year of Her Majesty's reign, for the purpose of constructing, maintaining and operating a government line of railway from a point within the city of Winnipeg, to a point within or near the town of West Lynne, within the province of Manitoba, such railway to be styled and known as "The Red River Valley



Railway," and to be a public work belonging to the province of Manitoba, and the construction of the railway and its management to be under the charge of the Railway Commissioner for Manitoba (an authentic copy of which last-mentioned Act is hereto annexed), and the said Act was assented to by his Honour the Lieutenant-Governor and became law on the first day of June, A.D. 1887.

21. That in pursuance of and under the authority of said "Red River Valley Railway Act," the Railway Commissioner for Manitoba did advertise for tenders for the construction and equipping of said Red River Valley Railway, and on the 29th day of June, A. D. 1887, did enter into a contract for the construction and equipping of said railway, and whereby the contractors became and are bound to construct and equip the said railway, whereby the province of Manitoba became and is bound to pay to the said contractors the sum of \$782,340.00 therefor.

22. That in pursuance of said "Red River Valley Railway Act" and of said contract, and prior to the 6th day of July, 1887, the said Railway Commissioner for Manitoba had the line of said railway surveyed, and a large part of the right of way therefor purchased, and the contractors had sub-let by contract, part of the work of construction and equipping of said railway, and the contractors and sub-contractors at once entered upon their work and prosecuted, and were on and prior to the 6th of July, 1887, prosecuting the same vigorously.

23. That the legislature of this province did at its last session pass a certain other Act, intituled: "An Act to amend the Public Works Act of Manitoba," by which Act the Minister of Public Works of the province was (amongst other things) given authority to construct any public work at the expense of the province, of which the construction is assigned to him by the Lieutenant-Governor in Council.

24. That the Governor General in Council did, by Order in Council and proclamation, dated the 6th day of July, A. D. 1887, disallow the said Act, intituled: "An Act respecting the construction of the Red River Valley Railway," and the said Act, intituled: "An Act to amend the Public Works Act of Manitoba," on the general ground (as set forth in the report of the Minister of Justice to Council), that each of the Acts referred to was in conflict with that policy of the parliament and of the government of Canada, by which it is sought to prevent the diversion of trade from the railway system of Canada to the railways of the United States.

25. That the legislature of this province did at its said last session pass certain other Acts granting charters to railway companies, and amongst them an Act, intituled: "An Act to incorporate the Winnipeg and Southern Railway Company," by which Act the company was given authority to construct a line of railway commencing at Winnipeg and running south or south-east to the international boundary of Canada and not extending beyond the province of Manitoba, and an Act, intituled: "An Act to incorporate the Emerson and North-western Railway Company," by which Act the company is given authority to construct a railway from a point on the Red River at or near St. Jean Baptiste in a north-westerly direction to the town of Portage la Prairie; and also a branch line from some point on the said line of railway, in a westerly or north-westerly direction, to a point on the western boundary of the province of Manitoba; and although the legislature had full power and authority to pass said two last mentioned Acts, yet the Governor General in Council did, by Order in Council, dated the ninth day of August, 1887, disallow the said two last mentioned Acts, on the ground (as set forth in the report of the Minister of Justice to Council), that the general objections taken in his report in regard to said "Act respecting the construction of the Red River Valley Railway" and the "Act to amend the Public Works Act of Manitoba," applied equally to the Acts then under consideration.

26. That the right of deciding what railway or other local public work should in the interests of the province, be built or constructed, is exclusively within the local legislature, and the interference with that right by disallowance of the Acts of the legislature is a violation of the spirit of the British North America Act and an arbitrary exercise of the veto power.

27. That the legislature of this province has decided that, in the interests of the province the Red River Valley Railway should be constructed and to that end unani-

mously passed the said Act, and authorized the construction of said railway as a public work of the province.

28. That during said last session of the legislature of this province, to wit, on the 9th day of June, 1887, the following resolution was unanimously passed by the legislative assembly :

“ On motion of the Hon. Mr. Norquay, seconded by the Hon. Mr. Harrison,

“ Resolved,—Whereas it is the avowed policy of the government of the Dominion to continue to advise the disallowance of railway charters granted by the legislature for the construction and operation of a line of railway to the southern boundary of the province ;

“ And whereas it is of the utmost importance to the people of the province that a charter for such a line of railway should be left to its operation, whereby they would be able to secure competing rates with the Canadian Pacific Railway, and obtain access to the markets of the world for their surplus produce by other than one channel ;

“ And whereas the rates charged by the Canadian Pacific Railway Company are so excessive that the energies of this province are crippled to an unwarrantable extent ;

“ And whereas the continuance of such a policy on the part of the federal government is calculated to deter immigrants from settling in the province, and to prevent the investment of capital therein ;

“ And whereas it is claimed on the part of the province that in chartering a line of railway wholly within the limits of the old province, as defined by 33 Vic., cap. 3, the legislature acts within its legal and constitutional right ;

“ Therefore, be it resolved, That should the power of disallowance be further exercised in reference to charters granted by this legislature for the construction and operation of a line or lines of railway wholly within the limits of the old Province of Manitoba, the government are hereby authorized to submit the case of the province, appealing from the action of the federal government, and praying that Her Majesty may be pleased to order that in future the province may be allowed to exercise in this respect her constitutional rights.”

29. That the will of the people has been attempted to be set aside by the exercise of the power of disallowance, in disallowing the said Red River Valley Railway Act, and said other railway charters.

30. And that by reason of the said policy of disallowance of provincial railway charters, all classes of our people have suffered loss ; distrust has been created where trust and confidence should have been inspired ; trade and commerce have been mischievously unsettled and disturbed ; immigration has been retarded ; the progress of the province has been seriously checked, and our people feel that, in being deprived of their undoubted rights under the British North America Act, they have not the full freedom of British subjects.

Your memorialists would therefore respectfully pray : That they may be heard before your Majesty in Council through the Honourable John Norquay, First Minister and Provincial Secretary ; the Honourable C. E. Hamilton, Attorney General of the province of Manitoba, and such Counsel as may be retained, to further explain the injurious effects of such interference with the legislative powers of the province, and that an early day be appointed for such hearing ; and further, that the practice of disallowing acts clearly within the power of the local legislature may be discontinued ; and that in the future the province may be allowed to exercise in this respect her constitutional rights.

And for such further or other relief as your memorialists may appear entitled to. And as in duty bound will ever pray.

Signed on behalf of the Executive Council of the province of Manitoba,

J. NORQUAY,  
*President of Executive Council.*

*Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 4th January, 1888.*

The Committee of the Privy Council have under consideration a despatch dated 12th October, 1887, from the Lieutenant-Governor of the province of Manitoba, transmitting a memorial to Her Most Excellent Majesty in Council, on the subject of the disallowance by the government of Canada of certain Acts of the provincial legislature, authorizing the construction of a railway connecting the city of Winnipeg with the United States system of railways at the international boundary line, with the request that the same may be forwarded to the Secretary of State for the Colonies.

The sub-committee of council, to whom the subject was referred by your Excellency in council, submit the accompanying observations on the said memorial.

The Committee of the Privy Council, concurring in the report herewith, advise that your Excellency be moved to forward a copy hereof to the Right Honourable the Secretary of State for the Colonies, at the same time as your Excellency is pleased to forward the memorial of the Executive Council of the province of Manitoba.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,  
*Clerk, Privy Council.*

*Report of Sub-Committee.*

The sub-committee, to whom was referred the petition of the government of Manitoba to the Queen's Most Excellent Majesty in council, on the subject of the disallowance by the government of Canada of certain Acts of the provincial legislature, authorizing the construction of a railway connecting the city of Winnipeg with the United States system of railways at the international boundary line, submit the following observations on the subject of the said petition:—

Upon that part of the petition which recites the conditions under which the province of Manitoba became a province of the Dominion, it is not necessary to offer any remarks. The sub-committee submit that Manitoba occupies in the confederacy precisely the same position in respect of its legislative powers as other provinces of the Dominion, those terms being determined by the ninety-second section of the British North America Act. It is sufficient, therefore, to refer to the general argument of the petition upon which it is sought to justify the complaint, that the policy of the government of Canada, in disallowing railway charters, is, in the first place, an act of bad faith, and, in the second, is calculated to impede the prosperity of the province.

The speeches, extracts from which are given in the petition of the government of Manitoba, delivered in parliament when the contract for the construction of the Canadian Pacific Railway was under discussion, do not bear the significance that is attempted by the petitioners to be placed upon them. The country extending from the western boundary of Manitoba to the eastern boundary of British Columbia, had by Act of the Canadian parliament been delegated to the North-west Council, under the direct legislative control of that parliament. It was competent, therefore, for the parliament of Canada to embody in a contract for the construction of the railway, any restrictions which might be deemed necessary, in so far as that territory was concerned. This right was subsequently recognized in the most formal manner by the legislature of the province of Manitoba, when, in the Act passed by that legislature accepting and confirming the extension of the boundaries of the province, the restrictive clause of the Canadian Pacific Railway contract was made applicable to the added territory of the province. But the Parliament of Canada had no power then, as it has no power now, to limit or alter any right conferred upon a province of the Dominion by the British North America Act. The legislative rights of Manitoba could not be, and were not



intended to be, affected by the contract with the Canadian Pacific Railway Company ; and it was to remove a misapprehension which had obtained to some extent in the public mind upon this point, that the statements which are quoted in the petition of the Manitoba government were made at the time the contract was under discussion.

But as the parliament of Canada could not restrict or alter any of the powers conferred upon a province by the British North America Act, neither could it change the terms of that Act which relate to the power of disallowance. That power remained to be exercised in the interests of Canada, whether as respects the province of Manitoba, or any other province of the Dominion. The petitioners admit that they acquiesced in the exercise of that power while the Canadian Pacific Railway was under construction, so as not to "impede the completion and rendering permanent of the Canadian Pacific Railway, the same being a national highway." This admission of the petitioners covers, in fact, the whole ground, and reduces the question to one of opinion as to whether it would be wise, in the interests of Canada, immediately on the completion of the railway, to abandon a policy for the protection of the Canadian Pacific Railway, and the interests of Canadian commerce, which it is conceded was properly pursued while the road was under construction.

Before dealing with that question the sub-committee desire to refer to another argument used by the government of Manitoba in their petition, based upon the ninety-second section of the British North America Act, defining the legislative powers of the parliament of Canada and the legislatures of the several provinces of the Dominion respectively. By sub-clause ten of that clause, control is given to the provincial legislatures over—

"Local works and undertakings other than such as are of the following classes :—

"(a.) Lines of steam and other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province ;

"(b.) Lines of steamships between the province or any British or foreign country ;

"(c.) Such works as although situate within the province, are before or after their execution, declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces."

The sub-committee submit that the distinction between works purely local and those of general interest, embodied in the above clause, is a very obvious one, and may be made more clear by reference to the sub-clause of the ninety-first section of the British North America Act, which confers upon the parliament of Canada exclusive jurisdiction in all matters affecting "the regulation of trade and commerce." To say that a provincial legislature shall not have power to legislate in respect of railways extending into another province, or into a foreign country, would be mere surplusage, for the reason that no powers can be conferred by any legislative body for the construction or working of railways beyond its own boundaries. It is clear, therefore, that the exception in sub-clause ten of the ninety-second section of the British North America Act, were designed to restrict the powers of the legislatures, to works of purely local concern, leaving to the exclusive control of the parliament of Canada, railways which, although situated technically within the boundaries of a province, are intended to become and being created with the express object of connecting with other railways beyond its limits, would thus become great arteries of interprovincial or international commerce.

Indeed this distinction has been expressly admitted by leading members of the Manitoba government and legislature. In a debate which took place in the legislature, during the season of 1883, on the subject of railways leading towards the boundary, Mr. Norquay, then, as now, premier of the province, said :—

"My friend contends that we can pass legislation chartering railways to the boundary line. I contend we cannot. In the B.N.A. Act, under the head of 'Exclusive powers of local legislatures,' we find telegraph, steamboat and railway lines, other than those connecting one province with another or extending beyond the boundary of the province. But my hon. friend says that I promised to re-enact the charter of the Emerson and North-western. Now, the avowed object of the parties seeking the

incorporation of that company was to build the line between the town of Emerson and several other towns in the province of Manitoba. The incorporators never showed any intention of making a connection south of the boundary. He had sympathized with the people of Emerson—he believed they ought to get that charter—would assist them to get it—and would not go back on his word. But Emerson shall get its charter for the avowed object for which incorporation was sought. When interested parties say that they intend using the bill in a manner to exceed the power which the local legislature could confer upon them—when this was said, those making the statements were responsible for the disallowance of that measure. The hon. member alluding again to the provincial rights cry, explained that he would be the last one to curtail any powers that belonged to us as a province; but he would also refuse to delude the people of Manitoba by clap-trap railway legislation, such as clearly exceeded our powers as a province.”

Mr. Wilson, then, as now, a member of the government, said :

“He believed that it was against the spirit of the B.N.A. Act for a provincial legislature to start railways which were intended to connect with foreign lines.”

Mr. Leacock, a prominent member of the legislature, said :

“He believed that the plain meaning of the Act was that the provinces should not have the power to charter lines to connect with foreign countries. Otherwise they might be able to frustrate the plans of the Federal authorities, as, for instance, in the case of military operations.”

And Mr. Attorney General Sutherland expressed his opinion, if possible, even more strongly, as follows :

“It was absurd to suppose that the provinces were not to be allowed to charter railways connecting one province with another, while at the same time they might charter railways to connect a province with a foreign country.”

Again in 1886, a debate took place in the Manitoba legislature on the subject of provincial railway charters, and the powers of the province in relation to them.

On that occasion Mr. Harrison, now Minister of Agriculture in the Manitoba government, thus expressed himself :

“To charter railways to run from any one point to any other in the province was a special power of the legislature, but it was distinctly prohibited that lines could be chartered to join roads in other provinces, or lines beyond the confines of the province. He would ask if it was of such immense necessity to the traffic of the province to build a line from Emerson to Portage la Prairie? He did not think so. It was in contemplation to connect the Emerson and North-western with roads outside the province. In doing that they were doing what was strictly prohibited by the British North America Act. If the line was designed as an interprovincial or international road, why did not the incorporators adopt the proper course open to them, and apply to the Dominion parliament for a charter?”

During the same session of the legislature, in March, 1886, a general debate took place on a motion of the leader of the opposition, Mr. Greenway, “That an humble address be forwarded to his Excellency the Governor General in Council, praying that there be no interference with our rights as a legislature in respect to railway legislation.” In the course of the debate, Mr. Norquay, the premier, dealt somewhat fully with the question, as follows :—

“Now, in the matter of being able to pass a charter to incorporate a company to operate within the limits of the province of Manitoba, the authority of the province in that respect has never been denied, as far as I know, by any individual on the floor of this House, but there has been a doubt as to whether the legislature could charter a line to make connection with a line beyond the boundary of the province. The House may charter to the boundary, and if, by any means, that line could make connection with others passing the province, it is a Federal business to say whether that line shall proceed to operation or not. That has been the contention of members on the government side of the House, and they have asserted by their legislation, time and again, the opinions which they entertained on this subject. I believe, and here reaffirm the belief that has been placed on our statute-book, that we can charter within the old province

of Manitoba, local companies to operate a line from one point to another within the province, but as for the connection with other lines, that remains for the Federal Government either to allow or disallow. \* \* \* I will refer to another important point. Gentlemen will come to the House with charters and insist on having those charters just as they placed them before the House, and that no interference be made by the House with their particular desires in that respect, and when, after they had been informed that these Acts would be subject to disallowance, and when they have insisted on their passage as they presented them to this House, then they should not be chagrined at their consequences. It would appear that the desire of these individuals was that those Acts should be disallowed. Charters were presented to this House more for the purpose of creating excitement than for promoting any really good objects. \* \* \* The hon. gentlemen opposite affirm that the Federal government claim a right which they do not possess. I think that the constitution plainly lays down that they do possess the power of disallowance, although that power should be guarded. \* \* \* In looking over the motion of the hon. gentlemen (Opposition) there is only one thing I would mention more, and that is the reference to our rights as a legislature. In this respect, while we are prepared to stand by our rights as a legislature, I think that anybody who looks over the constitution will see that while we have the undoubted right to enact railway charters, and while we have the undoubted right to enact anything coming within the exclusive rights of provincial legislatures, the Privy Council have the right to advise his Excellency the Governor General to veto any Act that is inconsistent with the general interests of the Dominion of Canada."

Mr. Larivière, then Minister of Agriculture and now Provincial Treasurer, following Mr. Norquay, said :

"In the course of the debate I find that our friends of the opposition make no distinction between the rights of this province, and the rights of the Dominion of Canada. I would like to ask if there is a gentleman on the other side of the House who will deny that the Dominion government had not the right to disallow not only railway legislation, but any Act the House might choose to pass, just the same as the Privy Council in England had the right to disallow any Federal Act. Such veto power is provided in the constitution. All the legislature can say is: We wish you not to interfere with our legislation by exercising what is your right. We hope you will not interfere with us, we know you have a right to impose your veto, but we do not wish you to do so, and hope you will see in your wisdom that it will not be done."

At the conclusion of the debate Mr. Greenway's motion was defeated by a vote of nineteen to eight, the legislature thus endorsing the views expressed by Mr. Norquay and others. Now the railway, the disallowance of the Act authorizing which, is complained of in the petition to Her Majesty from the government of Manitoba, is admittedly intended to connect with a foreign railway, and is therefore of the class referred to in the speeches, extracts from which are quoted above, as beyond the competency of the provincial legislature to authorize. The fourteenth clause of the said petition recites :

"That the province of Manitoba is separated from the markets of Eastern Canada by a distance of from 1,200 to 1,400 miles, and the province has only two outlets, namely, one north of the chain of lakes by way of the main line of the Canadian Pacific Railway, *via* Thunder Bay, and the other south of Lakes Superior and Huron by way of branches of the Canadian Pacific Railway to Greta and Emerson and thence by the St. Paul, Minneapolis and Manitoba Railway, south and east, with which last mentioned railway the Canadian Pacific Railway is in close alliance, and consequently no relief can be expected therefrom.

So that the railway in question, if constructed, is to connect with a foreign railway, with the express object of becoming an artery of international commerce, and is therefore within the evident meaning of the exception mentioned in sub-clause ten of clause ninety two of the British North America Act.

It is quite clear, in the opinion of the sub-committee, that but for this international feature of the enterprise, proposed to be created by an Act of the legislature of Manitoba,



such a railway, as a mere local work, would never be thought of. The district to be traversed by the proposed line is already well served by railways, there being two lines of railway from Winnipeg southward to the international boundary on either side of the Red River, which is navigable during the summer months, while it is well known that there is not sufficient local traffic for one railway. It is between these two lines, which on their entire length do not average more than twelve miles apart, that it is proposed, in the interests of foreign railway corporations, to build another line. The sub-committee venture the opinion that under similar circumstances the Imperial Parliament would not entertain an application for a charter for a third line.

Under these circumstances the sub-committee submit that the manifest international character of the enterprise and the absence of all pretence of reason for it as a "local work or undertaking," fully justifies its being dealt with by the government of Canada under the authority conferred by the nineteenth clause of the British North America Act, and in the interest of the whole Dominion.

It has already been pointed out that the policy of disallowance, in respect of Acts of the legislature of Manitoba authorizing the construction of railways touching the international boundary, and there connecting with the railways of the United States, was acquiesced in by the Manitoba government, while the Canadian Pacific Railway was being built, and in order to assure its completion as a great national highway; and that the only point of controversy, by the admission of the petitioners themselves, is as to whether the time has come for the abandonment of that policy. In order to arrive at a fair appreciation of this point, it is necessary to refer to the history of the Canadian Pacific Railway, and to the efforts of the Canadian government to secure its construction.

The building of a line of railway to connect the Pacific coast with the systems of railway in the province of Ontario was one of the conditions of the union of British Columbia with Canada. A contract was entered into with a company immediately after the union, but that company was unable, although aided by most liberal subsidies in land and money, to enlist the co-operation of capitalists, and the contract was surrendered. A change of ministry took place in 1873, and the new administration, at the first session of parliament after taking office, procured the passage of an Act providing still larger subsidies in money and lands to any company which would undertake the work of building this railway, and caused advertisements to be published in Great Britain and America inviting tenders under the terms of that Act. These efforts were unsuccessful, no offer having been made. In the meantime the government proceeded with the work of construction, as a public work, with the view of obtaining access to Winnipeg and thence to the North-west from Port Arthur, on Lake Superior in summer, and by the American system of railways in winter. But so fully was the fact recognized that in order to secure a Canadian Pacific Railway, the territory tributary to it must be preserved from competitive lines, that parliament declined to grant charters for such lines; and in a bill introduced by the government in the session of the Canadian parliament of 1878 to promote the construction of colonization railways in Manitoba and the North-west Territories, it was provided that no such railway should be authorized running within forty miles of the line of the Canadian Pacific Railway. It will thus be seen how general was the conviction, and how fully it was acted upon, that if private capital was to be enlisted for the building of this railway, reasonable protection against competition must be assured to that capital.

In the autumn of 1878, as the result of a general election, another change of ministry took place. The new administration undertook the prosecution of the work of construction the Canadian Pacific Railway with great earnestness; and as a result of its efforts, certain gentlemen, who afterwards became incorporated as the Canadian Pacific Railway Company, made a proposal to the government for the construction of a railway from Port Arthur, on Lake Superior, through the Rocky Mountains, to the Pacific coast. Had that proposal been accepted there would have been less necessity for providing against competition on the part of United States railways; but it was felt that such a railway would not meet the requirements of the country; that it would leave all that portion of Canada west of Lake Superior separated for six months of the year from the

thickly-settled provinces in the east, by a practically impassable barrier of over 600 miles of uninhabited country. To leave communication between the portions of Canada to the east and to the west respectively of Lake Superior dependent for one-half of the year upon the railway systems of a foreign country, with all the contingencies involved in such a dependence, would, on commercial grounds, have been folly, and on national grounds little short of madness. It was with a view of avoiding this, and of securing a transcontinental line of railway on Canadian territory, that the stipulation was included in the contract with the Canadian Pacific Railway Company that for twenty years, or in other words, for ten years after the term fixed for the completion of the railway, namely, 1891, "no line of railway shall be authorized by the Dominion parliament to be constructed south of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run south-west or to the westward of south-west, nor within fifteen miles of latitude 49." The object to be attained by this provision, and without which it could not be attained, namely, the construction of that section of the railway running north of Lake Superior, fully justified its inclusion in the contract; and the motive, namely, that reasonable time should be allowed for giving direction to the trade of the great west, so as to build up the commerce of the ports of eastern Canada, was, on commercial grounds, a most natural one.

It is argued that there is no binding legal obligation on the part of the government of Canada to protect the Canadian Pacific Railway by the exercise of the power of disallowance in respect of railways chartered by the legislature of Manitoba, and having their termini within the old boundaries of the province. Without discussing that question, it is sufficient to repeat that the government of Manitoba, in their petition to Her Majesty, admit that that power was properly exercised during the period of construction, in view of the terms of the contract with the Canadian Pacific Railway Company, and it may be inferred therefrom that the same acquiescence would have been yielded to it until the completion of the railway, had that completion been deferred until the period fixed in the contract, namely, 1891. The company, by a display of great energy and at a greatly increased cost to its proprietors, completed the work of construction five years before the time fixed in the contract, thus giving to Canada the advantages of a through line of railway, on its own soil, at a much earlier period than the most sanguine among the promoters of the enterprise believed to be possible. The same energy which marked the construction of the railway is being displayed in measures for the development of trade by it, from which Canada has already derived great, and in the near future must derive still greater, advantage. Under these circumstances, the undersigned submit that it would be only reasonable that the company should not be made to suffer because of the energy and increased expenditure they have contributed to give to Canada, in advance of the time stipulated in their contract, the advantages of this magnificent interoceanic highway; and that the same protection, which admittedly they were entitled to during the construction of the railway, should be extended to them at least for the period fixed in the contract for the completion of the railway, to enable them to carry on successfully the policy of traffic development which they are pursuing with so much success.

The government of Manitoba quote, in their petition, a speech delivered by Sir Charles Tupper, then Minister of Railways, in the House of Commons in 1884, in which the belief was expressed that, by the more rapid completion of the railway, the early abandonment of the policy of disallowance might be possible. The undersigned, however, submit that this speech cannot be interpreted as, in any sense, an arrangement or implied contract with the province of Manitoba. At that very time this question of disallowance was the subject of communication between the government of Manitoba and that of the Dominion. The legislature of Manitoba had sent three of its members, Messrs. Norquay, Murray and Miller, to confer with the government of Canada on certain subjects, which were embraced in a memorandum submitted by them. Among the subjects included in this memorandum was the following:—

"4. The right of the province to charter lines of railway from any one point to another within the province, except so far as the same has been limited by the legislature in the Extension Act of 1881."

The committee of council to whom this memorandum was referred, after conference with the delegates, reported; and upon this subject, after referring generally to the provisions in the charter of the Canadian Pacific Railway Company, continued as follows:—

“Whatever the provisions of the Canadian Pacific Railway Act, the province of Manitoba had in advance assented to, in accepting an extension of her boundaries, and an increase of area about tenfold, under an Act which provided ‘that the said increased limits and territory added to the province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted respecting the Canadian Pacific Railway, and the lands to be granted in aid thereof.’ Having accepted the increased area upon the above conditions, and knowing the long avowed policy of parliament to prevent the legitimate trade of the country, and the Canadian Pacific railway being diverted to the United States, your sub-committee consider that no injustice will be done to the people of Manitoba by the exercise of such supervision by the Dominion government over the railway charters sought from the Dominion parliament, or passed by the legislature of Manitoba, as will maintain this policy and the conditions of the Canadian Pacific Railway Act, until the expiry of the time named therein, or until the road is opened and trade established, when it is believed it may be repealed or modified without injustice, and with the consent of the contracting parties.”

This statement was embodied in the minute of council which was forwarded to the Lieutenant-Governor of Manitoba, for the information of his government and of the legislature of the province. Large concessions were made to the province as a result of the conference between the provincial delegates and the sub-committee of the Privy Council, the terms of which were embodied in the same despatch; and on the 10th January, 1885, Mr. Norquay, premier and treasurer of the province, in a letter on the subject of this despatch said:—

“Although not authorized by the legislature to accept any settlement, we are of opinion that the modifications suggested, leaving the other items of subsidy and concessions offered in the despatch of the 20th May last unchanged, would be favourably entertained by the legislature.”

They were so favourably entertained they were accepted by the legislature and embodied in an Act of that legislature, and this without any protest or remonstrance in respect of that part of the despatch quoted above which relates to the protection afforded by the exercise of the policy of disallowance to the Canadian Pacific Railway in its efforts to develop and direct the trade of the country served by it, for the benefit of Canada. Read in the light of the despatch to the Manitoba government of the 20th May, 1884, the speech of Sir Charles Tupper, upon which the petitioners rely to justify their appeal against the policy of the Dominion government, showed that not only was it contemplated that the road should be completed before that policy was abandoned, but that a reasonable opportunity should be afforded for the establishment and development of trade by it.

It is most important on commercial as well as national grounds that this policy should be continued for some time longer. The Canadian Pacific Railway has already attracted a considerable trade between China and Japan and the Atlantic markets of this continent. It has attracted attention as the most valuable highway, under British control, between the eastern and western possessions of the Empire. The Imperial authorities have become so impressed with its importance that they have agreed to grant a subsidy of £15,000 sterling per annum towards the establishment of a line of steamers on the Pacific Ocean, to be run in connection with the Canadian Pacific Railway. In the struggle for this Pacific trade the railway has already become a most important factor, being regarded as in some respects the most important of the trans-continental lines. Its chief competitor, the Northern Pacific Railway Company of the United States, has been making great efforts to bear up against this new competition, and it is admitted that the efforts to strike the Canadian Pacific Railway in its centre, by an extension of the Northern Pacific Railway system from the international boundary line to Winnipeg, is not with the object of affording competitive rates to the people of Manitoba, but to secure a weapon by which to control



the competition for trans-continental traffic from the Pacific coast, now rapidly finding its way over the Canadian route, and thus retain it for United States railways. It would be a most suicidal policy on the part of Canada to assist a foreign railway corporation in obtaining that weapon, to be used, as it must be used, in hampering a trade from whose growth the business men of the country have so much to anticipate.

The sub-committee do not underestimate the importance of reasonably low rates of transportation for the province of Manitoba and the great west; but they would point out that ample provision has been made in the contract with the Canadian Pacific Railway Company and by the action of the government to secure this object. Under the contract the tariff of rates chargeable on merchandise and passengers is to be fixed by Order of the Governor General in Council, and to remain until the earnings of the road are sufficient to pay a dividend of 10 per cent on the share capital of the company. But in order to afford greater protection against excessive charges, the tariff of rates has, with the concurrence of the company, been established only from year to year, thus bringing it under the constant control of the government. It is important to remark under these circumstances that no representations have ever been made to the government of Canada that the rates, as thus approved from time to time, have been excessive, unreasonable or oppressive. Not one specific complaint has ever been laid before the Railway Committee of the Privy Council, the tribunal specially charged with such matters by law; while on the contrary the evidence furnished by the company has shown that its rates are not only reasonable, but that they are, in the main, unusually low, as compared with those of other lines on this continent worked under similar conditions.

The policy of the government of Canada, so far from being directed to secure for the Canadian Pacific Railway a monopoly of the carrying trade within the boundaries of Manitoba, has been most generous in aiding in the construction of independent local lines of railway. There are at this moment upwards of 200 miles of independent local railway lines in the province, not in any way controlled by the Canadian Pacific Railway, and built by the aid of liberal grants of land made by the Dominion government. There are in addition over 200 miles of railway south of the main line of the Canadian Pacific Railway, to which subsidies in land were granted when they were in the hands of an independent company. That company was unable to enlist private capital in the construction of its railway, and transferred it to the Canadian Pacific Railway Company, as a result of which the people of southern Manitoba have been afforded the advantage of railway communication, of which but for the liberal policy of the government of Canada and of the Canadian Pacific Railway Company, they would have been probably for a long time deprived. And although the Canadian Pacific Railway controls the only line leading directly to the Great Lakes and to Eastern Canada, and the two lines southward to the Intercolonial boundary, its rates on traffic to and from the province have, in the nature of things, always been largely affected, and must continue to be largely affected, by the competition of the United States railways.

The sub-committee submit that the statement in the petition that the policy of the Dominion government in preventing the construction of railways to connect with the United States railway system at the International boundary is calculated to deter immigrants from settling in the province and to prevent the investment of capital therein, is not justified by the facts. Other circumstances, entirely unconnected with this question, have, to a limited extent, produced these results, chief among which is the wild speculation so general in the province between the years 1881 and 1883, caused by the immense expenditure in the construction of the Canadian Pacific Railway among a small population, and the depression which necessarily followed the completion of the railway among a small population, at the depression which necessarily followed the railway and the consequent cessation of expenditure. But in spite of these untoward events the progress of the province has been on the whole satisfactory. All experience shows that the early years of the settlement of new territories are always the most difficult; Dakota, during ten years, from 1860 to 1870, increased only about nine

thousand in its population; Colorado, between five and six thousand during the same period; Montana, less than nine thousand between 1870 and 1880, and so with others of the states and territories of the United States. The overflow into the new territories is always slow at first, until the attractive influence of the early settlement brings its natural result in the advent of old friends and neighbours. The progress of Manitoba, fairly rapid has it has been, also suffered from other causes. The agitation by the so-called Farmers' Union, which although representing only an insignificant minority of the people, was sufficiently influential to affect the immigration into the country; the Half-breed and Indian outbreak of 1885, although the seat of disturbance was several hundred miles from Manitoba, was used by foreign rival immigration agencies to deter immigrants from settling in the province; and the violence of language indulged in by a portion of the people and press, in connection with the controversy which forms the subject of the petition of the Manitoba government to Her Majesty, the foolish threats of armed resistance to the law which, to those ignorant of local conditions, were apt to be mistaken for the general sentiment of the people; and the untruthful statements published by the associated press as to the intentions of the government of Canada in relation to this controversy, have all had some influence in deterring the growth of population, which, under other circumstances, the splendid resources of the province would have certainly attracted.

Measured by the condition of the settlers in other parts of the continent, those of Manitoba have every reason to be satisfied. Ten years ago there was not a line of railway in operation within the province; now, as the result of the policy of the government of Canada, largely as a result of that feature of the government which forms the subject of complaint by the government of Manitoba, there are over one thousand miles in operation, and two other railways are under construction. Along the line of the Canadian Pacific Railway the farmers of Manitoba and the North-west Territories have been paid higher average prices for their grain than at corresponding points along the line of the Northern Pacific Railway, a fact which must, the sub-committee submit, be accepted as the true test of the railway service in the two countries respectively. It is impossible that a policy which has produced these results, can be properly stated as calculated to deter immigrants from settling in the province, or to prevent the investment of capital therein. On the contrary, while the policy of the government has been to afford the fullest development to the resources and industries of the province, it has had in view to prevent the diversion of a large part of the traffic of the province to a foreign country, by which the forces which have been most effective in building up the different industries of the province and bringing settlers to it, would be seriously impaired.

The sub-committee deem it right, before concluding these remarks upon the petition of the government of Manitoba to Her Majesty, to call attention to the great interest which the Canadian Pacific Railway company has in the growth and prosperity of Manitoba and the North-west Territories. The company are operating to-day, on their main line alone, the construction of which was the object of the contract entered into with the Canadian government, 2,562 miles of railway, along the whole extent of which the population does not exceed two hundred and forty thousand. Between the eastern boundaries of Manitoba and the Rocky Mountains, a distance of 1,063 miles it traverses the finest grain-producing and cattle grazing country on the continent, and the development of its traffic and its dividend-producing power is contingent upon the growth and prosperity of these two great industries. The company, moreover, own about sixteen millions of acres of land, in the settlement of which they have the greatest interest. It is inconceivable, under these conditions, that a corporation which has so direct an interest in the prosperity of the country and in the settlement of large immigration within its bounds, will adopt a policy calculated to retard that prosperity and that settlement.

The sub-committee, therefore, are unable to recommend that there should be an abandonment for the present of the policy of Canada, pursued by both political parties in the past, of preventing the trade of Manitoba and the great North-west from being diverted for the advantage of foreign railway corporations and foreign commerce, and of

protecting the great national interoceanic highway for a reasonable time to permit permanent direction to be given to the traffic of the country. Canada has made great sacrifices to secure the construction of the Canadian Pacific Railway. Upwards of seventy-one millions of dollars and over eighteen millions of acres of land have been voted by parliament for that purpose. These generous subsidies have been voted under the conviction that the older provinces of the Dominion would be greatly benefited by the increased trade which would flow down upon them as the result of the development of those portions of the Dominion lying west of Lake Superior; and the unwillingness to forego these advantages, by permitting this great western trade to be diverted to United States railways for the advantage of the commerce of a foreign country, found its expression at the last session of parliament in the emphatic vote of the House of Commons, in which every province is represented, and which had just come from a general election, at which the question formed one of the leading subjects of discussion. That vote the sub-committee submit, must be regarded not only as an endorsement of the policy of the Canadian government in the past, but as a mandate to the government to continue that policy in the future. Under all these circumstances the sub-committee believe that the wisdom and constitutional propriety of the policy pursued on this subject will be fully recognized by Her Majesty's government, to which the government of Manitoba in their petition appeal.

All of which is respectfully submitted.

THOS. WHITE,  
*Minister of the Interior.*

J. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 10th March, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th March, 1888.

The undersigned has the honour to make the following observations on the proposal to refer to the Judicial Committee of the Privy Council, the memorial of the executive council of Manitoba to Her Majesty in Council on the subject of the disallowance of provincial statutes and the reports thereon of the sub-committee and committee of the Privy Council of Canada, of which proposal intimation was given by the Right Honourable the Secretary of State for the Colonies to your Excellency by telegram dated the 16th day of February instant.

In the opinion of the undersigned no sufficient reason exists for such reference.

The memorial raised no question of law, on which the opinion of the judicial committee can be asked. It embodies a remonstrance against what the executive council seemed to consider an arbitrary exercise of the power of disallowance which is vested in your Excellency, and made no other suggestion of any legal question than is expressed in the following general statement:

"Our people feel that in being deprived of their undoubted rights under the British North America Act, they have not the full freedom of British subjects."

In this allusion to the deprivation of "rights under the British North America Act," it is apparent from the memorial that the executive council had reference to the rights conferred by that Act on the provincial legislatures to make enactments to authorize the construction of such works as the Red River Valley Railway. The power which the British North America Act confers on the legislatures of the respective provinces to pass statutes relating to any matter is, however, expressly made subject by that Act to the power of disallowance by your Excellency, and the memorial nowhere states and the executive council of Manitoba have never urged or suggested that disallowance has been exercised in any instance, beyond the power vested in your Excellency by the British North America Act.



Sections 56 and 90 of that statute clearly confer that power on your Excellency, irrespective of any reasons which may induce its exercise, or of any reasons which may be urged against its exercise.

In the reply which has been transmitted to the memorial of the executive council of Manitoba, the sub-committee and committee of your Excellency's Privy Council, it is true, indicated that doubts exist as to the right of the legislature of Manitoba to pass the enactments relating to the Red River Valley Railway which were disallowed, inasmuch as that railway should not be regarded as a "local work and undertaking" within the meaning of section 92, subsection 10, of the British North America Act; but the validity of the disallowance in no way rested upon the soundness of any of the reasons which may have induced it or which may have been put forward to justify it, and the undersigned thinks he may assume that it is upon the validity of the disallowance alone that it is proposed that the Judicial Committee of the Privy Council should be called on to pass an opinion. As to any question of policy in regard to disallowance, the judicial committee has not satisfactory means of arriving at a decision and is not a tribunal to which resort can properly be had, or which Canada is bound to regard.

The validity of your Excellency's veto in the cases complained of, the undersigned repeats, is not and never has been in dispute, and no question of such validity has ever been presented.

In addition to the fact that there appears to be no sufficient reason why the proposed reference should be made, the undersigned ventures to submit that grave reasons exist why such a course would be most inexpedient and unjustifiable.

One of these is that the reference has not been asked either by the executive council of Manitoba or by your Excellency's advisers. The reference would, therefore, be made by Her Majesty's government without the desire of either of the parties concerned in the controversy, and certainly without even the consent of one of the parties thereto.

There is no reason for supposing that the executive council of Manitoba would acquiesce in a decision by the judicial committee that the exercise of the veto was within your Excellency's power. On the contrary, it seems obvious at present that in case of such a decision, the executive council would contend that no redress from a legal tribunal had been sought or expected by them, and that the reference to the judicial committee had in no way disposed of their application. On the other hand, if it were possible to imagine that the decision of the judicial committee could be adverse to your Excellency's plain and uncontested right, no conclusion would be arrived at. There would be an extra-judicial expression of opinion on an abstract question by the judicial committee, pronounced in a proceeding in which there would have been no parties before the tribunal. If the decision were merely that the doubts which exist as to the Red River Valley Railway being a "local work or undertaking," are not well founded, there would still remain the ample justification for the exercise of disallowance that the enactments which were the subject of that exercise were against the general interests of Canada, and upon this point, if it were possible for the judicial committee to express an opinion adverse to the veto, the result would merely be a difference of opinion between your Excellency's constitutional advisers and the parliament of Canada on the one side, and a body of gentlemen on the other, who, although wise and eminent, are charged with no powers or responsibility by the constitution, in relation to the matter under consideration. Even the private rights and interests involved must still await the ordinary course of justice in the tribunals by which the law is administered in this country.

If it can be supposed that the purpose intended by the reference was that Her Majesty's government should be advised by the judicial committee with a view to further action, of an exceptionable nature, being taken by the government, or by any other authority, in the direction of imposing control on the exercise of the prerogatives which have been constitutionally entrusted to your Excellency's hands, the undersigned submits that grave reasons exist for a remonstrance on the part of the Canadian government which will leave no doubt on the minds of Her Majesty's government as to the extent of the right of self-government which the Canadian people believe they possess.

Her Majesty's government has been furnished, it is true, with a full reply to the memorial of the executive council of Manitoba, but the presentation of that reply ought not to lead Her Majesty's advisers to suppose that any interference with Her Majesty's government, or even by the parliament of Great Britain, with your Excellency's power and authority under the British North America Act, or with the distribution of legislative or executive powers made by that Act, would be regarded otherwise in Canada than as a dangerous interference with the constitution, to the maintenance of which the faith and honour of the parliament of Great Britain are pledged, and on which all the relations between the respective provinces and the Federal government depend. Whatever difference of opinion may exist in Canada as to the merits of the complaint of the late executive council of Manitoba, any such interference would be regarded with feelings of alarm by all Canadians, who desire that the union of the provinces of British North America shall be preserved, and that their connection with the British Empire shall continue to be regarded as the surest means of perpetuating the rights and liberties which they enjoy.

Your Excellency's advisers are responsible for the advice which they have given, or may hereafter give, as to the exercise of the powers and authority, so vested in you, to the Canadian parliament and to the Canadian people, and to no other body—parliamentary, executive or judicial.

The result of the appeal to the Canadian parliament has been already pointed out in the report of the sub-committee of council on the Manitoba memorial.

The undersigned would remind your Excellency that the principles on which the power of disallowance as to provincial statutes may properly be exercised were well laid down and announced in the first year of the confederation. On the 8th day of June, 1868, the Honourable Sir John A. Macdonald, then, as now first minister of Canada, and then also Minister of Justice, made a report, in which he indicated that the grounds for disallowance might properly be :

1. That Acts were altogether illegal or unconstitutional ;
2. That they were illegal or unconstitutional in part ;
3. That in cases of concurrent jurisdiction they clashed with the legislation of the general parliament ;
4. That they affected the interests of the Dominion generally.

This report was approved and adopted by the Governor General in Council on the 9th of June, 1868, and was transmitted to the right honourable the Secretary of State for the Colonies, and to the several provincial governments.

On 13th December, 1872, Mr. Henry Reeve, Registrar of Her Majesty's Privy Council, wrote, by direction of the Lord President, to Mr. Holland, in reply to a request to be informed whether the opinion of the Judicial Committee of the Privy Council could properly be obtained on the validity of a statute of the province of New Brunswick, thus :

"It appears to his lordship that, as the power of confirming or disallowing provincial Acts, is vested by the statute in the Governor General of the Dominion of Canada, acting under the advice of his constitutional advisers, there is nothing in this case which gives to Her Majesty in Council any jurisdiction over this question, though it is conceivable that the effect and validity of this Act may, at some future time, be brought before Her Majesty, on an appeal from the Canadian courts of justice.

"This being the fact, his lordship is of opinion that Her Majesty cannot with propriety be advised to refer to a committee of the council in England, a question which Her Majesty in Council has at present no authority to determine, and on which the opinion of the Privy Council would not be binding on the parties in the Dominion of Canada.

The undersigned feels that this language, emanating from the judicial committee itself, amply justifies the contentions which he has ventured to make in regard to a reference on the subject of the Manitoba statutes in question now.

Another reason which may be suggested against the course proposed is that such a reference is clearly unnecessary.

If any question exists as to the legal right or power of your Excellency to disallow the Acts which have been disallowed, either the executive council of Manitoba, or any individual who feels aggrieved by the disallowance, may raise the question of such illegality in the courts of the province of Manitoba, in a proceeding in which both parties to the controversy will have audience, and in which there is an ultimate appeal to the Judicial Committee of the Privy Council.

In fact, proceedings are now being carried on in the courts of Manitoba in which such questions may be raised and such appeal may be taken. Shortly after the Acts before referred to were disallowed, legal measures were taken to prevent the executive council of Manitoba and their agents and contractors from proceeding with works for which the authority of the disallowed Acts was necessary. Application was made for injunctions or restraining orders, not only against such agents and contractors, but against members of the executive council as well.

The defendants were represented by counsel, who discussed at great length, first before the chief justice of the province, and, in a second proceeding, before Mr. Justice Killam, of the Court of Queen's Bench of Manitoba, the rights of the applicants to obtain such injunctions or restraining orders, and also the validity of the disallowance, and the effect of such disallowance on the Acts in question and on the works which had been undertaken before the exercise of such disallowance.

In both cases the judgments delivered declared that the provincial statutes had been completely annulled by the exercise of the power of disallowance, that the works which these statutes were intended to authorize could not legally be carried on, and that the injunctions or restraining orders might be available to the applicants.

In the second proceeding, which was decided by Mr. Justice Killam, it was held that members of the executive council, were properly made parties to the proceedings and could be enjoined, as well as their agents and contractors.

The suits in which these applications were heard, were suits for perpetual injunctions. The decisions which have been arrived at are judgments in relation to interim injunctions or restraining orders, and these decisions appear to have been acquiesced in; but if the members of the executive council of Manitoba or their agents or contractors should at any time be advised that it is desirable that the opinion of the Judicial Committee of the Privy Council should be taken on any of the questions involved, they may yet appeal from the final decisions and present their cases to the judicial committee and they can present them in a far more convenient and satisfactory form than that in which a reference by Her Majesty's Government would take.

Finally, as to the statements of the executive council of Manitoba, that the people of that province have been, by the exercise of the power of disallowance, deprived of their undoubted rights under the British North America Act, it may be observed that that power is clearly applicable to provincial legislation which, although within the competence of a provincial legislature, is opposed to the general interests of the Dominion. Legislation which is considered beyond that competence may, sometimes without serious public injury, be left to its operation, as the judiciary can at any time declare it to be invalid. Of the question as to how far the interests of Canada may unjustly be affected by provincial legislation, the Federal Executive must be the sole judge, as it is the sole guardian of those interests. It is manifest, therefore, that it cannot with accuracy or propriety be asserted that in pronouncing the veto upon the Acts, which were deemed to have an injurious tendency as regards the country at large, your Excellency has deprived the people of Manitoba of any of their rights, even though such Acts may have been within the competence of the legislature of that province.

The undersigned recommends that your Excellency express to the Right Honourable the Secretary of State for the Colonies the dissent of your government from the proposal which is the subject of this report, and that a copy of this report, if approved, be transmitted to his lordship, in order that he may be informed of the grounds on which the dissent is based.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*



*Lord Knutsford to Lord Lansdowne.*

DOWNING STREET, 19th April, 1888.

MY LORD,—I have the honour to acknowledge the receipt of your despatches on the subject of the disallowance by the Dominion government, of the Manitoba and Red River Valley Railway Act.

I have sent an answer to the memorial of the executive council of the province on this question in my despatch of even date, and I would refer you to that despatch for my decision as to the prayer of the memorial.

In the minute of the Privy Council, which accompanied your secret despatch of 13th March, I observe that it is stated that "the reference has not been asked either by the executive council or by your Excellency's advisers." This statement would seem to have been made inadvertently, as the executive council of Manitoba in the final paragraph of the memorial, distinctly pray for leave to be heard by counsel before Her Majesty in Council.

I am glad to learn that there is a good prospect that the question at issue with the provincial government will be amicably settled.

I have, &c.,

KNUTSFORD.

*Lord Knutsford to the Marquis of Lansdowne.*

DOWNING STREET, 19th April, 1888.

MY LORD,—I have the honour to acknowledge the receipt of the memorial addressed by the executive council of Manitoba to Her Majesty in Council praying to be heard by Counsel with regard to the disallowance of the Red River Valley Railway Act and other railway charters, by the Dominion government.

After careful consideration of this question, I have been unable to advise Her Majesty to refer the petition to the Privy Council, inasmuch as the disallowance of the various Acts and charters in question, appear to have been based upon the general and undisputed power vested by statute in the Governor General, acting under the advice of his constitutional ministers; and further, because the question which it is sought to have argued before Her Majesty in Council is not one of constitutional law, but is in truth one of policy, over which the Privy Council have no jurisdiction.

I request that you will communicate a copy of this despatch to the government of Manitoba.

KNUTSFORD.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th June, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th May, 1888.

*To His Excellency the Administrator of the Government in Council:*

The undersigned, to whom has been referred two despatches dated the 19th April, 1888, from the Right Honourable the Principal Secretary of State for the Colonies to Lord Lansdowne, in reference to the application for the disallowance of the Manitoba Red River Valley Act, has the honour to report as follows:—

Lord Knutsford observes in the latter of these despatches that in the minutes of the Privy Council which accompanied Lord Lansdowne's secret despatch of the 13th

March, it is stated that the proposed reference of the memorial of the executive council of Manitoba to the Judicial Committee of Her Majesty's Privy Council, had not been asked by the executive council of Manitoba or by his Excellency's advisers, and his lordship adds that "this statement would seem to have been made inadvertently, as the executive council of Manitoba, in the final paragraph of the memorial, distinctly pray for leave to be heard by counsel before Her Majesty in Council."

The undersigned ventures to suggest, in order to remove what appears to be a mistaken impression, that the prayer to be heard by council before Her Majesty in Council did not, in the opinion of your Excellency's advisers, import a desire that the matter of complaint set forth in the memorial should be referred to the Judicial Committee of Her Majesty's Council, and the expressions which emanated from members of the Manitoba executive council, at the time when the memorial was adopted and since, have made it clear that such was not in fact the desire of the executive council, but that the executive council desired to remonstrate on other than legal grounds (which alone would have been available before the judicial committee) against the disallowance of Manitoba statutes, and that the request to be heard by counsel was made with a view to invoking Imperial executive control over the authority vested in your Excellency by the British North America Act.

The undersigned recommends that a copy of this report, if approved, be transmitted to Her Majesty's Secretary of State for the Colonies in order that his lordship may not continue to suppose that the statement made in the minute of your Excellency's Council, which accompanied Lord Lansdowne's secret despatch, before referred to on this subject, was unjustified, or made without due consideration.

JOHN S. D. THOMPSON,  
*Minister of Justice.*

*From Colonial Secretary to Governor General.*

DOWNING STREET, 12th July, 1888.

MY LORD,—I have the honour to acknowledge the receipt of your lordship's confidential despatch of the 20th ultimo, forwarding a minute by your Privy Council with reference to the disallowance of the Red River Valley Railway Act. I am glad to receive this explanation from your government for, as counsel are not heard, except before the Judicial Committee of the Privy Council, the Manitoba government seem to desire to appear before that body. As, however, the question of the railway has been amicably arranged, it is unnecessary to pursue the subject further.

I have, &c.,

KNUTSFORD.

## MANITOBA, 51 VICTORIA, 1888.

## 2ND SESSION, 6TH LEGISLATURE.

*Petition of creditors of Town of Portage La Prairie re chapter 14.*

*To His Excellency the Right Honourable Frederick Arthur Stanley, Baron Stanley of Preston, Governor General of Canada, in Council.*

The petition of the undersigned creditors of the town of Portage la Prairie in the province of Manitoba humbly sheweth.

The town of Portage la Prairie is a municipality incorporated by the laws of the province of Manitoba, and possesses power of contracting debts and issuing debentures for securing payment of loans and such other powers as are incident to a municipal corporation.

The said town from time to time many years ago issued debentures and borrowed money thereon, the first issue was for forty thousand dollars bearing interest at the rate of six per cent per annum, the second issue was for fifty thousand dollars bearing interest at six per cent per annum, the third issue was for one hundred thousand dollars bearing interest at seven per cent per annum.

The board of school trustees, for the town of Portage la Prairie, is an independent corporation, and that corporation has issued its debentures pursuant to the statutes of this province, and has borrowed money thereon to the extent of thirty-seven thousand dollars.

The said town of Portage la Prairie became indebted upon its promissory note, which came into the possession of your petitioner, the Federal Bank, and default having occurred in payment thereof, the bank recovered judgment against the town to the amount of three thousand five hundred dollars, upon this judgment executions were placed in the sheriff's hands, and they are still in the sheriff's hands in full force and unpaid and unsatisfied.

Several of your petitioners have judgments also against the said town, which judgments remain unpaid and unsatisfied.

The said town, together with the said school board, are indebted to the amount of about two hundred and fifty thousand dollars.

The said debentures above referred to were in some instances irregularly issued, and in order that the same might be freely negotiated, and in order to induce your petitioners to receive the same and become the holders thereof, and to stamp the same with legality, the following Acts of the legislature of the province of Manitoba were from time to time passed with reference thereto, namely:—

Chapter 41 of the statutes of Manitoba, passed in the 44th year of Her Majesty's reign. Chapter 41 of the statutes passed in the 45th year of Her Majesty's reign, and chapter 66 of the statutes passed in the 46th and 47th years of Her Majesty's reign.

Almost all your petitioners are holders of the debentures of the said town, and of the school board issued as aforesaid, and such of your petitioners as are not holders of the said debentures have other claims against the said town by way of judgment, and some of your petitioners, have judgments against the town for arrears of interest on the debentures, and those of your petitioners who are holders of those debentures were induced very largely to take them, and become holders thereof, because of the legislation of the province of Manitoba aforesaid, and of the right according to the laws of the province of Manitoba, then existing, by which in default of payment being made, they could recover judgment and proceed to collect thereon, as provided by law.



During the session of the legislature of the province of Manitoba which recently closed, an Act was passed which really deprives your petitioners who have judgments, of all rights to proceed upon the recovery thereof, and to all of your petitioners it fixes an amount which they are bound to accept, and beyond which they have no relief against the town, and the amount fixed by that Act, which your petitioners may receive, is so small that it will barely pay one-tenth of the annual interest due by the town to your petitioners.

The said last mentioned Act is known and described as "An Act respecting the town of Portage La Prairie."

The last mentioned Act deprives your petitioners of vested rights, and abrogates the contracts of the said town, and the same is really an insolvent law.

Wherefore your petitioners pray that your Excellency may be pleased to disallow the said last mentioned Act of the legislature of the province of Manitoba.

And your petitioners will ever pray.

For the Federal Bank of Canada,

H. C. HAMMOND, *President*.

For the Ontario Bank,

W. P. McCUAIG, *President*.

CHARLES NIAGARA } *Attorneys.*  
ALEX. POPE  
ROBERT HAMILTON.  
ISABELLA HAMILTON.

August 17th, 1888.

*Hon. Attorney General Martin to the Hon. the Minister of Justice.*

DEPARTMENT OF ATTORNEY GENERAL, WINNIPEG, MAN., 21st August, 1888.

SIR,—I have been informed that a petition has been sent to you somewhat generally signed by financial men and others in the city of Winnipeg, asking you to recommend the disallowance of chap. 14, 51 Vic., being an Act respecting the town of Portage la Prairie.

I have a very strong opinion myself as to the right of the Dominion Executive to recommend the disallowance of an Act so clearly within the jurisdiction of the local legislature.

I do not wish, however, to discuss at the present time that question, as I could scarcely hope that any argument I might use would affect your views.

I simply wish to lay before you a statement of certain facts which I think should induce you to refrain from interfering with the said Act.

I may say that as the member representing the town of Portage la Prairie, I introduced the Act into the House and secured the passing of it. I am satisfied that it is the fairest measure that could be devised to remedy a dead-lock which had arisen, and the continuance of which meant ruin both to the town and its creditors.

At one time the town was assessed for \$7,000,000, and at the time property was actually changing hands at values higher than the assessment.

In common with many other towns in Manitoba inflated by the unfortunate boom, Portage la Prairie incurred an indebtedness which now amounts to about \$300,000.

Some two years ago, after having been sued by several creditors of the town, being quite certain that they could not by any reasonable taxation raise sufficient money to pay the interest on the debt, after paying ordinary expenses and keeping up the schools, the town decided to abandon its municipal existence.

Accordingly the council and school board resigned.

The creditors under our laws had practically no remedy. Their claim accumulated against the town, but they received nothing; public confidence in the value of property in the place was destroyed, and although the prospects of the town were excellent, no improvements were made.

The matter came before the legislature in the session of 1886, when a committee was appointed to investigate the affairs of this and other bankrupt towns.

After hearing the creditors and representatives of the town, the committee recommended a settlement which was reduced to writing and signed on behalf of the creditors by Messrs H. M. Howell, W. L. Boyle, and the late Sedley Blanchard.

It was agreed by the members of the committee, and the representatives of the town and creditors, that a fair settlement had been arrived at, under which the town would pay the creditors all that it was able to do.

The town was then, has continued to be, and is now, ready and willing to carry out that settlement.

The creditors almost unanimously refused to carry out the agreement which had been signed on their behalf by the above mentioned gentlemen.

Efforts have from time to time been made by the town to induce the creditors to carry out that arrangement, or to enter into some other arrangement possible for the town to carry out. The creditors have always refused.

In 1887, Mr. Howell, representing the creditors, induced the legislature to pass an Act being chap. 39, 50 Vic., copy of which I inclose.

The town of Portage la Prairie at once proceeded to carry out the Act; the government at their request appointed a commission. The sittings of the commission were duly advertised, but no creditor put in an appearance.

The commissioners proceeded with their work and made the report, copy of which I also enclose you.

The creditors refused to act upon the report, and matters continued in *statu quo*, till last session. I succeeded in getting the Act passed, which these same creditors are asking you to disallow.

If you will examine the Act carefully you will find that it does not attempt to reduce the amount claimed by any creditor; that it provides for the taxation of twenty-one mills on the dollar, this being considered about the highest limit that property can fairly pay; that the amount realized from this taxation is all paid over to the creditors, after providing for the running expenses of the town, and the keeping up of the schools.

The creditors are allowed an appeal from the assessment in case any effort should be made by reducing the assessment below its fair value to, prejudice their rights.

The Act is intended as a temporary one to continue only till some arrangement can be made, between the town and its creditors.

If at any time the creditors can show that the town refused to enter into an arrangement that could be carried out, I can say on behalf of the government that the legislature will be asked to repeal this Act. In the meantime the creditors' claim against the town stands intact, the interest accumulates, less the amount paid to the creditors under the provisions of the Act.

It is admitted by every one who knows the facts, including the creditors, that the town of Portage la Prairie, worth, according to the report of the commissioners, \$560,000 of assessable property, cannot possibly pay the interest upon a debt of nearly \$300,000.

The average interest payable upon its debentures being, I think, something over seven per cent.

The only chance there is for the creditors to get their money is for the town to grow and increase in value.

You will admit at once that the indebtedness of a municipal corporation must be paid out of its annual revenues; that this indebtedness is not intended to be a mortgage upon the property situate in the municipality, but a mortgage upon the revenues of the municipality.

The only possibility of the revenues of the town becoming large enough to pay the interest upon its gigantic debt, is the prospect of the town increasing sufficiently in value

to warrant a taxation sufficient to meet such interest. If the present Act is disallowed the town cannot grow.

A new council has been elected under the provisions of the Act, and once again the town prospers; building has commenced; public confidence has been restored; the people see before them some future; investments once more are freely made in the town, which is well situated, and which has, I claim, as good a prospect as any place in the North-west, outside Winnipeg.

The disallowance of the Act would stop all improvements, all investments.

The deadlock would again arise, the council would be forced to resign, the creditors could get nothing.

Under these circumstances I feel satisfied that even if you should decide that legislation of this kind should be interfered with by the Dominion Executive, this particular Act is so fair both to the people of the town and its unfortunate creditors, that you will be doing a great injustice to both parties by the exercise of your power.

If you desire, I shall be happy at any time to furnish you the fullest evidence with regard to all the statements that I have made.

I may say that I believe the reason we do not get a settlement with our creditors is this. Most of our debentures are held by a client of the late firm of McArthur, Boyle & Campbell; the loans were really forced upon the town at the time they were made. McArthur, Boyle and Campbell having lost their client's money, have, I think, endeavoured to make him believe that the failure of the town to pay its interest has arisen from the rascality of the inhabitants, rather than from the depression which has occurred in property here.

Under these circumstances, the client being a rich man to whom the sum at issue is comparatively speaking a small sum, refuses to enter into any arrangement whatsoever with us.

I have, &c.,

JOSEPH MARTIN,  
*Attorney-General.*

*Petition of "The Call Printing Company" to His Excellency the Governor General in Council, re Chap. 13.*

*To His Excellency the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, in the County of Lancaster, in the Peerage of Great Britain; Knight Grand Cross of the Most Honourable Order of the Bath, Governor General of Canada and Vice Admiral of the same, Governor General of Canada, in Council.*

The humble petition of the "Call Printing Company" respectfully sheweth as follows:—

1. Your petitioners are a body corporate, incorporated under the laws of the province of Manitoba, and authorized to do a printing and publishing business in the city of Winnipeg.

2. Prior to the 1st day of February, A.D. 1887, the government of the province of Manitoba obtained tenders from the Manitoban Printing Company, Limited; Kenny & Luxton; and the Canadian Publishing Company, for certain printing required for said province, including printing and printed forms, and blank books containing printing, thereafter to be required for the legislature of the said province and the clerk thereof, the executive council of said province and the clerk thereof, and the other several departments and offices of the said government, including sub-departments and branches of departments or offices under the control of said government, and also including printing supplied at the expense of the said government for the various courts of the said province, and the several offices of the municipal commissioner and land titles office, and the binding in connection with the work above mentioned, and for the supply of the necessary material to be used therefor.



3. That the tender of the said The Manitoban Printing Company, Limited, for the said English printing and other work and material was much lower than that of Kenny & Luxton, and was accepted by the Lieutenant-Governor in Council of said province of Manitoba.

4. That upon the 24th day of May, 1888, Mr. William Fisher Luxton, a member of the said firm of Kenny & Luxton, the business rivals of your petitioners, in an open letter to the public, published in the *Free Press* newspaper, admitted that the rates agreed upon in said contract to be paid for said printing were reasonable.

5. That the said Manitoban Printing Company, Limited; the said Kenny & Luxton; and the Canadian Publishing Company, were the only parties in Manitoba, at the dates of said tenders, having plant, type and facilities necessary for the performance of the said work and the supply of the said material.

6. That in pursuance of said tenders, and having regard to the fact that the tender of the Manitoban Printing Company, Limited, was the lower, the Lieutenant-Governor of said province in council accepted the said tender and awarded to the said the Manitoban Printing Company, Limited, the contract for the said work, and on the first day of February, 1887, a contract between Her Majesty the Queen, represented therein by the Honourable Charles Edward Hamilton, the Attorney General of said province, and the said the Manitoban Printing Company, Limited, was, without any knowledge on the part of the Manitoban Printing Company, Limited, of any irregularity or illegality affecting said contract or tenders, duly entered into and executed for the performance of the said work, and the supply of said material by the Manitoban Printing Company, Limited, at the prices mentioned in said tender, and subject to the terms contained in the said contract, a true copy of which contract is produced herewith.

7. The said contract was thereupon duly authorized by the Lieutenant-Governor in Council of said province, and was in all respects legally entered into and executed.

8. In said contract it was provided and agreed among other things that the same should subsist and remain in for and during the four years from and after the said first day of February, 1887, and that the same should not be assigned without the consent of the Lieutenant-Governor in Council for the said province.

9. It was further agreed that the said contract might be cancelled at any time after the first day of February, 1887, by either party thereto, on giving six months notice of such intention so to do, but that no such notice could be given previous to the first day of February, 1888.

10. The said the Manitoban Printing Company, Limited, continued to perform the work and supply the material provided for by said contract until the eighteenth day of April, 1887, when the same was duly assigned to your petitioners, The Call Printing Company, and on the seventh of May, 1887, the said assignment and transfer to your petitioners was duly consented to by the Lieutenant-Governor of said province by order in council dated the said 7th day of May, 1887.

11. Since the date of the said assignment to your petitioners, your petitioners have continued to perform said work and supply said material for the government of Manitoba, and continued to do so until about the first day of March, 1888, shortly prior to which date, your petitioners are informed, an order in council was passed by the Lieutenant-Governor in Council of said province, assuming to cancel and set aside the said contract, and since that date your petitioners have not performed any of such work or supplied any of such material for the government of the province of Manitoba, the performance of said work and the supplying of such material having been wrongfully taken by the government of the province of Manitoba from your petitioners, in contravention of the said contract and the express provisions thereof.

12. That your petitioners, during said time, and while the same was given them to do, always performed said work and supplied said material to the satisfaction of the government of Manitoba in every respect, and no complaint was ever made as to the quality of said work or materials.

13. That neither before nor after the attempted cancellation of the said contract did your petitioners receive any notice whatever of any intended cancellation or determination of the said contract, as provided by the terms thereof.

14. That about the first day of March, 1888, in breach of said contract, the government of the said province assumed, secretly, without giving a public or other notice thereof, or asking any competition, to enter into a contract or agreement with The Manitoba Free Press Company, a corporation doing a printing and publishing business at the city of Winnipeg in said province, and of which said William Fisher Luxton, then a member of the legislative assembly of the province of Manitoba, was then the president and one of the two largest stockholders, for the performance of the work and supply of the materials mentioned in said contract, and since said last mentioned date the said The Manitoba Free Press Company has continued to perform said work and supply said material, and to be paid therefor by the government of the province of Manitoba, in distinct breach of the said contract and the terms thereof.

15. That an Act entitled "An Act respecting Public Printing," chaptered 13 of the Acts passed in 1888, was passed by the legislative assembly of Manitoba upon a vote of seventeen for to eight against the same, and passed its various readings, and was assented to by his Honour the Lieutenant-Governor of this province, in Her Majesty's name, on the 18th day of May, 1888.

16. That a copy of said Act so passed is hereunto annexed.

17. That the object and effect of said Act so passed, was, as your petitioners show and charge, to benefit the *Free Press* newspaper, supporting the present government of Manitoba, to injure your petitioners, and to legalize the wrongful and illegal breach of the said contract entered into as aforesaid, and of which contract your petitioners are the assignees, and wrongfully deprive your petitioners of their rights and claims under said contract.

18. That the said Act, if not disallowed by his Excellency the Governor General, will have the effect of cancelling the said contract, and will be an arbitrary and unjustifiable interference with your petitioners' vested rights, and as your petitioners charge is a subversion of the inviolability of contracts entered into with the province of Manitoba as a province of the Dominion of Canada.

19. Your petitioners further show that if, as stated in the recital of the said bill, the agreement so entered into, was entered into in violation of any of the statutes or laws of the province of Manitoba there would no necessity for declaring that the said contract was or is illegal, and that if the same were legal when entered into, the same should not be cancelled, set aside or affected as intended by said Act.

20. The said bill further takes away the right to claim against Her Majesty the Queen or the province of Manitoba for damages or otherwise in connection with the said contract for any matter after the first day of February, 1888, and your petitioners show that this legislation is vicious in principle, and such as should not be allowed to become or remain law.

21. The public press of the province of Manitoba, without respect to party, have disapproved of said legislation and condemned the same as an unjustifiable interference with the right of the subject to appeal to Her Majesty for redress.

22. Your petitioners have suffered serious damage by said legislation and are about to present a petition of right pursuant to the statutes of Manitoba in that behalf, claiming compensation to which they are entitled by reason of the breach of the said contract and the loss sustained by them in consequence, and the said measure, if allowed to become and remain law would tend to defeat the claim of your petitioners in such proceedings, although your petitioners are rightfully entitled thereto.

And Your petitioners therefore humbly pray your Excellency to disallow the said Act for the reasons above stated.

And your petitioners will ever pray, &c.

Signed on behalf of the "Call" Printing Company.

ACTON BURROWS,  
*President.*

WINNIPEG, 30th August, 1888.

*Hon. Attorney General Martin to Deputy Minister of Justice.*

WINNIPEG, MAN., 24th June. 1889.

SIR,—Your letter of the 25th September, 1888, inclosing a copy of a petition addressed to his Excellency the Governor General, by the Call Printing Company, praying for the disallowance of cap. 13 of the Acts of the legislative assembly of Manitoba, 1888, intituled: "An Act respecting Public Printing," has been received.

With regard to this matter, I take the position that the Act sought to be disallowed deals entirely with matters of local concern, and in such a case I think the Governor General in Council should not interfere, whatever views may be entertained with regard to the expediency or justice of the legislation. If the legislation be bad, the people of the province can surely be trusted by their votes at the proper time to punish its promoters. Any interference on the part of the Dominion authorities with Acts such as the one in question, would savour of paternal government in an exasperating form that was never contemplated by the British North America Act. The Government of Great Britain has not pursued such a course with regard to the Dominion legislation, and I would submit that the Dominion authorities should deal with provincial Acts in the same broad-minded manner, that has characterized the action of the home government respecting Dominion Acts.

I would point out to you that it is provided by the statutes of Manitoba, 42 Vic., cap. 20, sec. 2. that "The Queen's Printer shall, within one month from the date of the passage of this Act (viz., 25th June, 1879), call for tenders (by advertising in all the new-papers in the province for the period of one month) from persons willing to contract with the government for the printing required by the government, not exceeding three years, and henceforth this shall be the manner in which similar contracts shall be made," and that this was the only Act with regard to public printing in force at the time the contract referred to in the sixth paragraph of the petition herein purported to be entered into between the Hon. C. E. Hamilton, the then Attorney-General of Manitoba, and the Manitoban Printing Company, Limited, the executive of this province in entering into this contract ignored the clear mandate of the legislature as expressed in the said last-mentioned Act. Tenders were not called for by advertising in all nor in any of the new-papers of the province for the period of one month nor for any other period. In addition to this the contract is for a period of four years, whereas the Act provides that such a contract should not exceed three years.

Herewith I send you a letter clipped from a copy of "The Morning Call," of the 2nd June, 1888. It was written by Mr. Acton Burrows, editor of "The Call," to Mr. Luxton, editor of "The Free Press"; also a letter in reply by Mr. Luxton. A perusal of these letters will, I think, convince you that a fraudulent and successful attempt was made to give the contract to a particular company, while keeping up the appearance of competition. The contract was awarded to the Manitoban Printing Company, Limited, at exorbitant figures, and for a period of four years. When the present government came into power, having become aware of the above facts, they determined to promptly stop what they considered an illegal and impudent plundering of the slender resources of this province. In pursuance of this determination, the Act complained of was passed on the 18th May, 1888, tenders were asked for, and a contract entered into for a year at figures that will result in a great saving of the public funds.

The above is probably sufficient to indicate the position of this government respecting this Act. I would again urge that it is solely domestic in its nature and operation, and for that reason alone should not be interfered with by the exercise of the veto power.

I have, etc.,

JOSEPH MARTIN,  
*Attorney General.*



*Petition of Col. Jas. Mulligan to His Excellency the Governor General re Chapter 27.*

*To His Excellency the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, Governor General of Canada and Vice Admiral of the same.*

The humble petition of James Mulligan of the town of Oshawa in the province of Ontario, Esquire, sheweth as follows:—

1. Your petitioner prior to the year 1882 was, and he is still, the owner of a large tract of land on the south side of the Assiniboine River opposite the terminus of Boundary street in the city of Winnipeg at the bank on the north side of the river.

2. Prior to the year 1882 the said tract of land was situated in the parish of St. Boniface, and was separated from the city of Winnipeg by the Assiniboine River.

3. Early in the said year negotiations were entered into between the owners of land in the said parish and the council of the city of Winnipeg with a view to extending the city limits, so as to embrace the property of your petitioner and of other persons in the said parish.

4. Thereupon an agreement was entered into between the parties aforesaid for the extension of said limits upon certain terms.

5. Afterwards at the request, and with the sanction of the said city and of the petitioner, and the other owners of the said lands, the said agreement was embodied in the charter of the city as contained in the statute known as 45 Victoria, chapter 36.

6. By the said statute the land of your petitioner was included in the limits of the said city, and by various clauses the city was compelled to carry out the terms of the agreement.

7. The terms of the said agreement are set forth in section 165 of the said statute. The part to which your petitioner desires now to call attention being in the words following, that is to say:—"The mayor and council of the city shall construct and erect, or cause to be constructed and erected within one year from the date of the passing of this Act, a passenger and traffic bridge across the Assiniboine River within the city west of Armstrong's Point at or near Boundary street, and the said bridge may be either a draw, swing or suspension bridge, but before the same is erected the plans thereof shall be subject to the approval of the Governor General in Council."

8. In subsequent legislation relating to the said city passed in the years 1884 and 1886 the same clause was re-enacted, the statutes being known as 47 Victoria, chapter 78, section 210, and 49 Victoria, chapter 52, section 740.

9. Notwithstanding the requirements of the said statutes the city neglected to build the said bridge, and the same has never been built or commenced.

10. On the twenty-fourth day of February, 1888, the plaintiff commenced an action in the court of Queen's bench for Manitoba against the city of Winnipeg, claiming damages for the non compliance of the city with the provisions of the said statute, and the writ in the said action was duly served upon the said city, and the city caused an appearance to be entered thereto.

11. The land of the plaintiff aforesaid is situated in that part of the territory so added to the city of Winnipeg which would be greatly benefited by the erection of the said bridge, as the south end of the said bridge would rest upon the land of the plaintiff, and thus cause all the surrounding land which also belongs to the plaintiff to be much enhanced in value.

12. By an Act passed by the legislative assembly of Manitoba during the present year, assented to on the eighteenth day of May and known as 51 Victoria, chapter 27, section 57, the rights of your petitioner in the premises are greatly interfered with.

13. The said section is in the words and figures following, that is to say:—"Except so far as it may from time to time be deemed advisable by the council, neither the city of Winnipeg nor the council thereof shall for a period of five years from the passing of this Act, be required to comply with any of the provisions contained in section 165 of chapter 36 of the statutes passed in the 45th year of Her Majesty's reign and of section 210 of the Act chaptered 78, passed in the 47th year of Her

Majesty's reign, and subsections thereof, and section 740 with subsections of chapter 52 of the statutes passed in the 49th year of Her Majesty's reign respectively and no action, suit or other proceeding shall be instituted or, if begun, proceeded with against the city or the council, for any omissions in respect of the matters provided for in said section, either prior to the passing of this Act or during such period of five years thereafter."

"Provided, however, that nothing herein contained shall in any way repeal, abridge or limit the powers and authorities of the council in the said sections contained."

14. By reason of the inclusion of your petitioner's land in the said city, the taxes payable by your petitioner have been very largely increased, the taxes now claimed by the city in respect thereof amount to over three thousand dollars, and the said city threatens and intends to sell your petitioners' land for those taxes, unless the same are paid.

15. Your petitioner submits that the said statute is a direct invasion of the agreement under which your petitioner and others assented to the said legislation, and is in that and other respects subversive of their rights and a great injustice to them.

Wherefore your petitioner humbly prays that the statute 51 Vic., chap. 27, may be disallowed, and as in duty bound your petitioner will ever pray.

JAMES F. MULLIGAN.

OSHAWA, 5th September, 1888.

*Honourable Attorney General Martin to Deputy Minister of Justice.*

WINNIPEG, MAN., 6th March, 1889.

SIR,—Referring to your letter of the 29th September, 1888, inclosing copy of petition from James Mulligan asking for the disallowance of certain legislation I now beg to send you by registered parcels post:—

Answer from the city of Winnipeg respecting the matter.

I may say that the legislation in question was passed at the request of the city of Winnipeg, but that the House were unanimously, so far as I remember, agreed that the proposition to postpone the building of the bridge for five years was a fair one in the interest of the city at large, and that practically no persons could be damaged by it.

I understand that Mr. Mulligan claims that his assessment is unduly high. This is quite possible as the assessment of the city generally has been in the opinion of most persons too high and not equally divided. It is altogether probable that the special legislation by which they are enabled to assess in this manner, will be repealed next session, thus compelling them to assess property at its actual value. I may say that I have never had myself any sympathy whatever with their desire to have special powers with regard to their assessment. As to the bridge, there can be no question that it is not at all needed at the present time.

With regard to the general question of disallowance I fancy you already know my views as to that. I submit that the Dominion authorities should not disallow under any circumstances, legislation of this kind, even supposing that in their opinion it was not fair. It is a matter entirely within the jurisdiction of the local house and the representatives of the people here are the best judges as to whether it is proper for legislation to be passed or not, and they are directly responsible to the people whose representatives they are, for anything wrong that they may do.

I have, &c.,

JOSEPH MARTIN,  
*Attorney General.*

*Answer of City of Winnipeg to Honourable Attorney General of Manitoba re Chapter 27.*

*To the Honourable the Attorney General of the Province of Manitoba :*

The city council of the city of Winnipeg has before it the copy of the petition of James F. Mulligan to his Excellency the Governor General of Canada, and by you transmitted to the city solicitors last month, and, having in open meeting of this council considered the same, desires to make the following reply, and to request that you will transmit it with your own representations to the government at Ottawa :—

1. The union of what is now Ward One, with the city, took place 30th May, 1882. Everything then, both in values and in opinion of personal and civic prosperity, was in a state of inflation.

The boom ideas of that time anticipated that very soon the four thousand acres of Ward One would be occupied by a city population. Hence the addition to the city and the arrangements then as to building a bridge near Boundary street. But, lest it be said that this is no answer to the hardships complained of by the petitioner, the council will proceed to show that he has not been injured in any way, and that it would be against public policy and justice to grant the prayer of his petition.

2. Annexed hereto are maps showing the city's division into wards. The first marked "A" shows the acreage of each, also the population and assessment in 1888, since when there has been no real or relative change in value. It also shows the actual residences in Ward One between Osborne street bridge and the western limit of the city nearly two miles west of the site of the proposed bridge. This plan is made by the city surveyor and shows said residences in Ward One by means of small black coloured squares.

3. Looking at the maps it is observed at a glance that the Main and Osborne street bridges afford ample accommodation for nearly every resident of the ward. Only those living far west of Osborne street desirous of visiting at Armstrong's Point or in Ward Three of the city would require the bridge. But Armstrong's Point and Ward Three are so sparsely settled that the intercourse is but very slight. The fact is that ever since the admitted collapse of the boom in 1882-3, there has been a general consent that no bridge was required, and that no one would go over it if built.

4. In Ward Two, Colony Creek, near line of Osborne street, is shown, and the annexed letter of the city surveyor shows, that for the people west of it there is as little need of another bridge as for those south of the Assiniboine.

5. To make up for the non-building of this bridge, the city council has after several conferences with committees of the residents, expended large sums of money in grading streets in Ward One, and in building sidewalks. A sidewalk in fact runs along river avenue, as far west as the point marked "x end of sidewalk," while the drive way of the street is paved with cedar blocks from Main street bridge all the way around to Osborne street bridges, and in addition the city maintains an electric light service in this ward. For its assessment and population, no part of the city has been so liberally considered as the inhabited portion of this ward. In consideration of these improvements the residents of the ward have never made known or represented any wish to have the bridge proceeded with. Indeed such a thing would have been absurd.

6. The petitioner has not been injured in respect of his taxation. He has not been assessed higher than he probably would have been had his property remained in the country municipality, separated only from the city by the Assiniboine river. Besides lot 52 hereinafter referred to, he owned parish lots 43, 45 and 46 in St. Boniface West. This is the property in question, making a total of three hundred and sixty-nine and sixty-five hundredths acres. On the twenty-first day of December, 1881, he sold this property for \$184,675 receiving as appears by the agreement \$20,000 in cash and taking a mortgage for the balance. On the twelfth day of January, 1882, his purchaser sold it for \$247,230. The mortgage to the petitioner being in default, he foreclosed it on the ninth day of September, 1887. His sale above mentioned was made several months before Ward One came into the city. For all the years beginning with 1883, that it has been assessed by the city, it has been assessed as so many acres of farm lands.



7. In 1883, the 369 acres were assessed for \$75,000. In 1884, for \$50,000. In 1885, for \$37,000. In 1886 for \$32,000. In 1887, for \$28,300. In 1888 for \$31,100.

Probably the above amounts are higher than the sums which could have been obtained if the property had been thrown on the market, but this can be answered fully in two ways. 1st. It is notorious that property all over the province has been assessed beyond its selling price, and 2nd. The city has for some years avowedly assessed real property above actual value, and to remove any legal doubts obtained legislation enabling them to do so "provided the assessment was fair and equitable." The assessment was placed high so as to keep the rate low, and though objection may be made to such a policy, yet as between owners in the same municipality, it is not unjust. The city assessor has on oath on appeals, from his assessment, stated that so far as landed assessment throughout the city is concerned he assessed 50 per cent to 55 per cent above actual value, and neither the court of revision, or the judge on appeal from same has questioned his assessments on that ground.

8. Neither the petitioner nor the other owners of the property held by him as aforesaid have at any time since the union of Ward One with the city appealed against its assessment.

9. With the exception of about two hundred dollars (\$200) and the taxes on about four acres sold in lots, neither the petitioner nor any other owners of said lands have paid any taxes whatever on said lands, parish lots 43, 45 and 46, (in all 369 acres) and with the exception aforesaid the city has not collected one cent of taxes on the same since it came into the city, but further the petitioner on the first day of October, 1888, filed his bill of complaint in the Court of Queen's Bench, equity side, against the city, praying that a threatened sale of the said lands for taxes might be enjoined and restrained on the ground that the rate charged on taxes in arrear since 1st January, 1887, 9 per cent per annum, was *ultra vires* of the local legislature, to authorize and also on the ground of irregularities in manner of assessment. This suit is still pending; awaiting hearing, but to avoid legislation the city council has made an offer of settlement, still open, by which the city would rebate \$1,023 of the taxes and pay the costs of suit.

10. The petitioner was not taken by surprise by the legislation of cap. 27, 51 Vic. His solicitors were duly notified in writing of the intention to ask for same, and counsel for him attended before the committee of the legislative assembly and argued same. The committee was unanimous in favour of the legislation, and no objection was made in committee of the whole, or in the house afterwards. Indeed the situation was obvious from the windows of the legislative building itself.

11. Even the petitioner's costs in his suit for damages have been provided for. See accompanying copy letter from the city solicitors to petitioner's solicitors, and these costs the city will pay so soon as bill of same is presented.

12. Search made in the city of Winnipeg registry office shows—1st. An agreement dated 24th June, 1887 (several months before the petitioner's suit against the city referred to in his petition) to sell all his remaining interests in said property to Mrs. Gilmour. Also, 2nd, his deed to her of 3rd October, 1888, showing that the agreement has been carried out, and the city of Winnipeg, therefore, charge that the petitioner has no *locus standi* or reason for pressing his said petition before the Governor General in Council.

Previous to the sale to Mrs. Gilmour, the petitioner sold and conveyed certain town lots, part of the above named parish lots to another purchaser.

13. So far as appears in the city assessor's, the city registry and the provincial land titles' offices, the petitioner owns no lands in Ward One. He did also own parish lot 52, but sold and transferred it on the 14th day of December, 1887, which also was prior to the legislation complained of, and prior to the bringing of the action instituted by the petitioner for damages.

The city of Winnipeg therefore submits:

1. That the legislation agreement with Ward One has been substantially carried out and obeyed.

2. That in any case the changed circumstances would justify a departure from the strict letter of the law.

3. That it would be a gross departure from public policy, and the requirements of justice and would be a mere waste of the city's money, were the bridge to be built either voluntarily or by compulsion.

4. That no justice has been done to or injustice suffered by the petitioner because long before the union of Ward One with the city he had sold his said lands, except parish lot 52, sold before the date of the legislation complained of, and at the time of the sale, the city was under no obligation to him except as to said lot 52.

5. That the fact of his since re-acquiring the legal title through foreclosure does not better his position in respect of lots 43, 45 and 46, as he acquired it by virtue of his mortgage. Contract made before the city had agreed to build the bridge.

6. That he has not been unfairly dealt with in the matter of assessment which has been equitable and fair to all property owners, but on the contrary the city to avoid litigation has offered to treat him (or whoever is really the owner) most generously, by a rebate of \$1,023.90 on his taxes.

7. That the petitioner has no title or interest in Ward One which gives him a right of any kind to petition the Governor General in Council, he having parted with his title to the said lands.

8. That the petitioner was duly notified of the intended legislation and his counsel appeared before the committee of the legislative assembly of Manitoba, and was given full opportunity for stating his objections to the legislation now complained of.

9. That the legislation complained of does not act as a perpetual bar, but only suspends the city's liability for five years.

10. That the petitioner's cost of the suit brought by him are safely provided for though not so stated in the Act of the legislature.

11. That Ward One has by the several councils of the city been compensated by other expenditures of public money.

12. That the residents and owners of property in Ward One do not desire the city to go to the expense of a useless bridge such as the one referred to would necessarily be for some time, in the present prospects of the city's growth.

13. That in a case where the rights and justice of the case are so obvious, it is clearly within the constitutional rights and powers of the local legislature to pass the act containing the section complained of (section 57 of chapter 27 of Manitoba statutes, 51 Vic.), and that the same ought not to be disallowed.

All of which is respectfully submitted.

In witness whereof the city of Winnipeg has caused its corporate seal to be affixed to these presents, and the signatures of its mayor and city clerk to be also hereto made, the eighteenth day of February, A.D. 1889.

THOMAS RYAN,  
*Mayor.*

C. B. BROWN,  
*City Clerk.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th September, 1888.

*To His Excellency the Governor General in Council.*

The undersigned has the honour to report upon the Acts of the legislature of the province of Manitoba passed in the 1st session of the present year, 1888, (chapters 1 to 4, 7 to 12, 15 to 19, 21 to 26, 28 to 37, 39 to 46), and to recommend that such Acts be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

NOTE.—The Acts, chapters 13, 14 and 27 do not appear to have been reported upon.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 22nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th Sept., 1888.

*To His Excellency the Governor General in Council.*

The undersigned has the honour to report upon the following Acts passed by the legislature of Manitoba in the first session of the present year, 1888.

Chapter 5 "An Act providing for the construction of certain Railway Lines."

The purpose of this Act is, to regulate the building of railways by the province. Section 8 gives the commissioners powers, among other things, to enter into and upon any public lands and lands of Her Majesty, as well as to take possession of all lands, watercourses, &c., except navigable waters, the appropriation of which is in his judgment necessary for the railway. By subsection N of section 2 the expression "lands" includes all granted or ungranted, wired or cleared, public or private lands and lands of Her Majesty, and there can be but little doubt that the intention of the legislature as herein expressed, is to enable the provincial government by its railway commissioners to expropriate the public Crown lands of Canada. In the opinion of the undersigned such legislation is beyond the powers of the provincial legislature.

Chapter 6 "An Act respecting Expropriation of Lands."

This Act makes provision for the expropriation of lands for the public works of Manitoba. Section 2, subsection C, defining the meaning of the word "land" as used in the chapter and section 3, subsection 6, giving the minister power to enter upon any land, are subject to the same objection as the provision referred to in chapter 5. In each of these chapters there should be clear and unequivocal provisions to the effect that nothing therein contained should affect in any way any Crown lands, the property of Canada.

Section 22 is as follows :—

"In the case of Dominion lands taken under the provisions of this Act for any public work of the province, the value to be paid for any lands taken or for the compensation as aforesaid shall be settled and paid as may be mutually agreed between the government of Canada and the government of the province; or the same way be determined under the provisions of the Revised Statutes of Canada, chapter 40, intituled, "An Act respecting the official arbitrators," "and when so determined the amount thereof shall be paid by the Provincial Treasurer to the Minister of Finance and Receiver General."

In the opinion of the undersigned this provision is *ultra vires* of a provincial legislature. The government of Canada can not be coerced into parting with its lands in the way indicated, and the section should be repealed.

The undersigned does not at present intend to make a final report in respect to these two Acts, and inasmuch as a session of the legislature of the province of Manitoba may be held within the time limited by the British North America Act for the disallowance of these statutes, and there is therefore no immediate necessity for final action by your Excellency in respect to them, the undersigned respectfully recommends that in the meantime a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the province of Manitoba, with a suggestion that his advisers promote legislation so amending the statutes, by eliminating the provisions to which objection is herein made, as to bring them within the provincial jurisdiction.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice*



*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th Sept., 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts of the legislature of Manitoba, passed in the first session of the present year, 1888.

Chapter 20 : "An Act to amend chapter 5, 50 Victoria."

The original Act, of which this chapter is in amendment, relates more or less to the subject of insolvency, and has been commented on by the undersigned in previous reports.

Chapter 38 : "An Act to amend chapter 47 of the Acts passed in the forty-sixth and forty-seventh years of her present Majesty's reign, being an Act to encourage the building of railways in Manitoba."

Section 5, subsection 22, is legislation in reference to aliens, authorizing them, as well as British subjects, to be shareholders in the railway companies.

The undersigned has frequently, in former reports bearing upon provincial legislation, called attention to the fact that the parliament of Canada has extensive legislative authority in respect to aliens, and legislation of this character by a province is an infringement of this power.

Chapter 47.—"An Act to incorporate the Brandon and Rock Lake Railway Company.

This Act purports to incorporate a company with powers to build a railway commencing at or near Brandon, thence running south-easterly to the international boundary with a branch extending to the western boundary of the province.

This Act is one of a series of Acts incorporating railway companies in Manitoba for the purpose of erecting and operating railways, either to the international boundary between Manitoba and the United States, or to the western boundary of the province, or to both.

The undersigned feels called upon to make the following observations in reference thereto:—

"The British North America Act 1867" section 91, gives to the parliament of Canada exclusive legislative authority in respect to the regulation of trade and commerce, and also in relation to those classes of subjects which are, by section 92, assigned exclusively to the provincial legislatures.

In the enumeration of classes of subjects assigned to the provincial legislatures by section 92, the following subject is excepted:—

"Lines of railway connecting the province with any other of the provinces, or extending beyond the limit of the province."

The railway referred to in this Act would seem to be an undertaking within the meaning of this exception, and if it be so, the Act incorporating it is beyond the power of a provincial legislature. The policy of the framers of The British North America Act would appear—from a careful consideration of the subjects assigned to the Parliament of Canada and to the legislatures, respectively—to have been to confine the latter to undertakings wholly within the province, and not touching or having any connection with either an adjoining province or adjoining foreign territory, and to leave all means of international or interprovincial communication for Dominion legislation. Ferries between a province and any British or foreign country, or between two provinces, are regulated by the Dominion parliament; so are lines of steamships between a province and any British or foreign country.

There seems, therefore, to be some reason to doubt the power of the provincial legislature to authorize the construction of a railway to the boundary line, between the province and the United States, but the power to authorize the construction of a railway connecting the province with another province, is clearly in the Dominion parlia-

ment alone. In this instance the railways authorized will connect the province of Manitoba with the North-west Territories, and it would seem, therefore, that if the validity of such enactments can be established, it can only be done by relying on the technical difference between the territories and a province.

Another question may arise in relation to the authority of the legislature of Manitoba to pass these statutes, viz., whether such railways will connect with or cross the line of the Canadian Pacific Railway; for if they should, they are, by section 306 of The Railway Act, 1888 (sections 121 of chapter 109 of the Revised Statutes) declared to be works for the general advantage of Canada, and section 92 of The British North America Act, subsection 10 (c) declares that works, although wholly situate within the province, which are before or after execution, declared by parliament to be for the general advantage of Canada, are excepted from the legislative jurisdiction of the province, and, consequently, remain within the sole jurisdiction of the Dominion parliament.

Section 15 of this Act (chap. 47) relates to aliens, and is in this respect subject to objection, as dealing with a matter within the exclusive control of the Dominion Parliament.

Chapter 48, "An Act to amend an act to incorporate the Brandon, Souris and Turtle Mountain Railway Company," and chapter 49, "An Act to incorporate the "Emerson and North-western Railway Company."

The former of these Acts confers additional powers upon the company, and gives it the right to build and operate a line of railway from a point near Brandon, thence to the international boundary, and from a point on such main line to the western boundary of the province; while the latter (chapter 49) purports to incorporate a company with power to build and operate a line of railway from Emerson to Portage la Prairie, and also a branch line from some point on the western boundary of the province of Manitoba, and a local extension of such line of railway, eastward from Emerson to the Lake of the Woods.

Both of these acts are subject to the same observations already made in reference to the Act to incorporate the Brandon and Rock Lake Railway Company.

Section 17 of the latter of the two Acts under consideration, viz.: chapter 49, provides that every mortgage deed given by the company shall be deposited in the office of the Secretary of State for Canada.

The office of the Secretary of State is not in any way subject to the legislative authority of the provincial legislature, nor may duties or obligations be thereby imposed upon him. This provision is therefore nugatory.

Chap. 50, "An Act to incorporate the Emerson, Souris and Brandon Railway Company."

This act authorizes the construction of a railway from a point on the international boundary to the city of Brandon, and contains the provisions as to aliens before cited. It is, therefore, subject to the observations of the undersigned in reference to chapter 47.

Section 3, of this Act provides as follows:

"The company shall not commence any bridge over a navigable river, or any work thereunto appertaining, until the company shall have submitted to the Governor General of Canada in Council, plans of such bridge and of all the intended works thereunto appertaining, nor until the plan or site of such bridge shall have been approved by the said Governor in Council, and such conditions as he shall have thought fit for the public good to impose, touching the said bridge and works, shall have been complied with, nor shall any such plan be altered, nor any deviation therefrom allowed, except upon the permission of the said Governor in Council, and upon such conditions as he shall impose."

This section is beyond the competency of the legislature, which is not authorized to prescribe the conditions, or provide procedure in relation to the building of bridges or other erections over navigable waters, that subject being within the exclusive legislative authority of the Dominion parliament. The provision is, however, a harmless one, as it brings the operations of the company in this particular under the control provided by parliament.

Chapter 51, "An Act to incorporate the Manitoba Central Railway."

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Chapter 52. "Act to incorporate the Turtle Mountain and Manitoba Railway Company."

Chapter 53. "An Act to incorporate the Winnipeg and South Eastern Railway Company."

The first of these Acts (chapter 51) provides for the construction of a railway from the city of Winnipeg to the international boundary line, with branches extending to the westerly boundary of the province of Manitoba.

The second of these Acts (chapter 52) provides for the construction of a line of railway from the 49th parallel of latitude (the international boundary line) to the western boundary of the province.

The third of these Acts (chapter 53) authorizes the construction of a railway from the city of Winnipeg to the international boundary line.

These three last mentioned Acts (chapters 51, 52 and 53) are subject to the observations already hereinbefore made on Acts incorporating railway companies.

The undersigned has the honour to recommend, in reference to the Acts herein reported on,—notwithstanding the observations which he has felt called upon to make, that they be left to their operation. If their provisions are to be put into practice, abundant opportunities will be offered for testing their validity, and in the meantime no public interest seems to call for the exercise of your Excellency's power of disallowance.

The undersigned would further recommend that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Manitoba, with a request that his honour's advisers may promote legislation, having in view the amendment of so many of these enactments as may be made to conform to the powers of the legislature.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*



## MANITOBA, 52ND VICTORIA, 1888-89.

1ST SESSION, 7TH LEGISLATURE, August 28 to October 15, 1888, Chaps. 1—14 and 49.

2ND SESSION, 7TH LEGISLATURE, January 31, to March 5, 1889, Chaps. 50—54.

*Petition of Pioneer Assembly, Knights of Labour of Winnipeg, re Chap. 48, to His Excellency the Governor General in Council.*

*To the Right Honourable Sir Frederick Stanley, Baron Stanley of Preston, Governor General of Canada and Vice Admiral of the same (in Council):*

MAY IT PLEASE YOUR EXCELLENCY.

The humble petition of Pioneer Assembly, Knights of Labour of Winnipeg, province of Manitoba, humbly sheweth:

Whereas by the Manitoba Municipal Act of 1886, the several municipalities in the province are authorized to levy and collect taxes on all lands (other than those specially exempted).

And whereas it has been customary, under the authority of the above mentioned Act, in the cases of rural municipalities, to impose an addition of ten per cent on all taxes in arrear, and in the case of the city of Winnipeg to impose, in cases of arrears, a charge at the rate of nine per cent.

And whereas in a suit in which the Honourable John Schultz was plaintiff, and the city of Winnipeg were defendants, his lordship the Hon. Thomas Wardlaw Taylor, Chief Justice of the Court of Queen's Bench of Manitoba, granted to the plaintiff a perpetual injunction against the city of Winnipeg, forbidding their carrying out the proposed sale of the plaintiff's lands for arrears of taxes, on the ground that the city had no power to impose a charge or interest of nine per cent on taxes in arrears, or, if they had power, under the above mentioned Manitoba Municipal Act, such legislation was *ultra vires* of the Manitoba legislature. (*Man. L. R. Vol. VI., p. 35.*)

And whereas the legislature of Manitoba, at their last session passed an Act, chap. 45, intituled: "An Act to further amend chapter 52 of 49 Victoria, being the Municipal Act of 1886 and amendments."

And by section 22 of such amending Act it is provided that "no sale of any lands for arrears of taxes heretofore or hereafter made under the provisions of any statute of this province shall be impeached or set aside, or held to be invalid on the ground that a rate or percentage, whether by way of increase or interest or otherwise, was added to the original amount of taxes, and forms part of the claim for arrears for which the lands were sold. The Court of Queen's Bench for Manitoba shall not have jurisdiction to impeach any sale for alleged arrears of taxes on the ground set forth in this section. This section shall not apply to cases in which, prior to the 5th day of March, A.D., 1889, suits in equity were instituted affecting any such sale on the said grounds, or any of them."

And whereas much hardship and injustice has been done to owners of real property in the city of Winnipeg and other parts of the province of Manitoba, in consequence of the arbitrary manner in which lands have been seized and sold for arrears of taxes, in many cases the owners having received no notice of the intended sales, and not unfrequently, being even ignorant of the facts till long after the sales had been effected.

And whereas considerable litigation, in connection with such sales has been commenced and remains to be disposed of, and especially as the ill effects of such litigation are more likely to be felt by the artizan and labouring classes, who can ill afford the

heavy expense entailed by any appeals to the court of judicature, either for the purpose of prosecuting or defending their legal rights.

And whereas it is held by many members of the legal profession, and other competent authorities, that legislation which assumes to give power to municipal bodies to seize and sell lands for arrears of taxes, and to give deeds of title for the same, without resort to legal process against the owners, and without the owners receiving due and legal notification of the same, or being afforded an opportunity of appearing in defence of their legal rights, is *ultra vires* of the Manitoba legislature.

Your petitioners therefore pray that your Excellency in Council will be pleased to disallow the said Act passed at the last session of the Manitoba legislature, and to direct such other measures to be taken for the relief of your petitioners as may seem best to your wisdom.

Signed on behalf of the Pioneer Assembly, Knights of Labour, and whose seal is hereto affixed, in this city of Winnipeg, this seventeenth day of April, A.D. 1889.

Parliamentary Committee of Knights of Labour, Winnipeg.	{	W. FRANK LINN, ARCHD. WRIGHT, JAS. HARRIS, HENRY FERGUSON.
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*Messrs. Macdonald, Tupper, Phippen & Tupper to the Hon. the Minister of Justice,  
re chap. 45.*

WINNIPEG, 1st June, 1889.

SIR,—On behalf of a number of ratepayers in the province of Manitoba whose rights to their property have been destroyed by section 58 of 51 Vic., chap. 27, entitled “An Act to amend the Manitoba Municipal Act, 1886, and amendments,” and section 22 of 52 Vic., chap. 45, entitled “An Act to further amend chap. 52 of 49 Vic., being the Manitoba Municipal Act, 1886, and amendments,” we beg to submit for your consideration the justice of advising his Excellency the Governor General to disallow the legislation referred to.

Section 58 of 51 Vic., ch. 27, which was assented to on the 18th day of May, 1888, provides that “all assessments made and rates heretofore struck by the municipalities, are hereby confirmed and declared valid and binding upon all persons and corporations affected thereby, but this section shall not in any way affect any appeal or cases pending at the time of the coming into force of this Act, where the validity of any such assessment or rate may have been questioned.”

You will observe that the legislation, which is retroactive, is of the most sweeping character, and no matter how illegal and unauthorized any past assessment may have been, the person or corporation to whom the property assessed belongs is powerless to dispute it.

The administration of municipal law in Manitoba has always been characterized by the greatest possible looseness and inefficiency. In many cases the requirements of the Act relating to assessment of property have been almost entirely neglected. In some cases no notice of the assessment has been given; in others the notice has been served upon the wrong parties, and again property which is exempt from taxation has been constantly assessed.

Until the clause in question was passed the owners of property, which had been thus improperly assessed could of course protect their property from confiscation, by an appeal to the courts on the ground that the assessment was invalid.

If, however, this clause is left to its operation they are absolutely without redress and by this retroactive legislation are forever deprived of their property.

Section 22 of 52 Vic., chap. 45, which was assented to on the 5th of March, 1889 is, if possible, still more vicious legislation.

It is as follows :—

“ No sale of any lands for arrears of taxes heretofore or hereafter made under the provisions of any statute of this province shall be impeached or set aside or held to be invalid on the ground that a rate of percentage, whether by way of increase or interest or otherwise was added to the original amount of taxes, and form part of the claim for arrears for which the lands were sold. The Court of Queen's Bench of Manitoba shall not have jurisdiction to impeach any sale for alleged arrears of taxes on the ground set forth in this section. This section shall not apply in cases in which prior to the fifth day of March, A.D. 1889, suits in equity were instituted affecting any such sale on the said grounds or any of them.”

In the case of *Schultz vs. the city of Winnipeg*, the chief justice of Manitoba in November last granted an injunction restraining the sale of certain property in the city of Winnipeg on the ground that in the arrears for which the property was advertised to be sold was included a rate of  $\frac{3}{4}$  of one per cent per month on the overdue taxes—equal to 9 per cent per annum—which he held was interest and that the local legislature had therefore no power to authorize the city of Winnipeg to charge it, as interest is by subsection 19 of section 91 of The British North America Act one of the subjects over which the Dominion parliament has exclusive jurisdiction, and that parliament had fixed the legal rate of interest at six per cent in the absence of agreement between the parties. (*Shultz vs. Winnipeg, Man. L. R., Vol., VI., p. 35.*)

The defendants appealed from this decision, and while the appeal was sub-judice the local legislature passed the above clause.

On the 7th instant the Court of Queen's Bench for Manitoba gave judgment sustaining the decision of the chief justice, Mr. Justice Killam dissenting. We inclose certified copies of the judgments. (*Shultz vs. Winnipeg, Man. L. R., Vol. VI., p. 42.*)

In delivering judgment, Mr. Justice Bain referred to the legislation in question in the following terms :—

“ This section, passed as it was, while the question was still sub-judice, seems to admit practically and frankly not only that the added rate was interest, but also that the legislature had exceeded its powers in imposing it, for if the addition had been legal and valid there could be no object whatever in thus legislating in reference to it. And here I feel compelled to express my deep regret that the legislature should have allowed itself to be induced to grant such legislation. If, as has manifestly been assumed, the imposition of the rate was illegal, then the attempt has been made by this section to take away from those who have been arbitrarily and illegally dispossessed of their property, their right of applying to the court for redress. If the rights and securities of property are to be preserved, this is a right which cannot be lightly interfered with, and the existence of this section in the statutes, passed apparently as it has been in the interests of a few, and in derogation of the rights of citizens generally, is in my opinion a reproach to a province that claims to enjoy free institutions.”

And Mr. Justice Killam said :—

“ Having had the advantage of a perusal of the judgment about to be delivered by my brother Bain, I desire to express my concurrence in his remarks upon the character of the legislation of the last session of the legislature, assuming at a stroke to take away rights of property which the chief justice had already in this very suit declared to exist.”

It is unnecessary for us to add anything to these strong judicial expressions of disapproval of this legislation, and in conclusion we venture to submit that for the reasons we have given both the sections alluded to should be disallowed.

We have, &c.,

MACDONALD, TUPPER, PHIPPEN & TUPPER.



*Messrs. Macdonald, Tupper, Phippen & Tupper, to the Hon. the Minister of Justice.*

WINNIPEG, MAN., 25th June, 1889.

SIR,—Referring to our letter of the 1st instant, submitting for your consideration the propriety of advising the Governor General to disallow section 58, of 51 Victoria, chapter 27, and section 22, of 52 Victoria, chapter 45, we beg to advise you that, upon the authority of the case of *Schultz vs. Winnipeg*, copies of which decision we inclosed in our former letter, an application was made on Thursday last to Mr. Justice Killam, for an injunction to restrain the city of Winnipeg from issuing a tax deed for certain property which had been sold for arrears of taxes in which a sum for interest was included.

Counsel for the city took the objection that in view of section 22 of 52 Victoria, chapter 45, the court could not grant an injunction upon such grounds, and after full argument Mr. Justice Killam sustained the objection, stating that he had not the shadow of a doubt in his mind that the legislature had power to enact the section in question. (*Schultz vs. Winnipeg, Man. L. R., vol. VI., p. 269*).

Under the provisions of our Municipal Act : unless land which has been sold for taxes is redeemed within two years from the date of the sale, a deed issued to the purchaser, which is declared by section 673 of 49 Victoria, chapter 52, as amended by section 52, of 50 Victoria, chapter 10, to be "conclusive evidence of the validity of the sale," and it is further declared by that section that "no such tax sale deed shall be annulled or set aside except upon the following grounds and no other :

"That the sale had not been conducted in a fair, open and proper manner ; or that there were no taxes due, and in arrear upon such land at the time of said sale, for which the same could be sold by such municipality."

In the case of *McCrae vs. Corbett* (*Man. L. R., vol. VI., p. 426*), in which one of the grounds upon which it was sought to annul a tax deed, was that interest at the rate of ten per cent had been included in the arrears for which it was sold, the chief justice recently held that under the above section, a tax deed could not be questioned if at the time of sale there were any taxes due.

You will therefore see that if the legislation which Mr. Justice Killam has declared to be *ultra vires* of the local legislature, is not allowed, the owners of property will be powerless to prevent their property being confiscated unless they pay an amount which the courts of this province have declared has been illegally demanded

We have, &c.,

MACDONALD, TUPPER, PHIPPEN & TUPPER

*Hon. Attorney General Martin to the Deputy Minister of Justice.*

WINNIPEG, MAN., 19th July, 1889.

SIR,—Yours of the 9th inst., inclosing copies of correspondence *re* sec. 58 Vic., cap. 27 and sec. 22, 52 Vic., cap. 45. With regard to the first mentioned section I must say that I think the operation of the section is unfair. I have brought the matter before the government, and they have agreed to ask the House next session to repeal the section. With regard to sec. 22 of cap. 45, 52 Vic., I think that the action of the House was quite justifiable, although it must be admitted that it is very strong legislation. The court here has decided that the local legislature had no power to provide for the payment of ten per cent, additional upon the taxes on a certain day in the year. This decision was a most unexpected one, and has upset the practice of the province in municipal law for many years following the practice in Ontario. There is a very strong opinion amongst many lawyers here that the court is wrong on this question. I myself am very strong of the opinion that the decision is incorrect. The effect of the decision

was to cause almost inextricable confusion all over the province. If it should turn out that the court were wrong, a great confusion would again be caused by reverting to the old state of affairs. After very careful consideration and a great deal of discussion, it was decided that it would not be unfair to pass the section under discussion with a view to holding matters in *statu quo*, till the decision of the Supreme Court could be had. It seems to me that there is a very strong argument, to say the least, in favour of that contention, that the imposition of a certain percentage upon a certain day cannot be called interest. Interest, it appears to me, is a charge for the use of money, just like the rent of land accruing from day to day. In the case of taxes, a certain amount is added absolutely on a certain day, the day after, the week after, the month after, the amount is no greater, and for that reason I contend that there is no parallel between the case of interest and the case in point. I am aware, however, that there have been strong decisions in the courts to the contrary, but I do not feel inclined to rest content with these till the Supreme Court has pronounced upon the point. Again I am quite convinced that the principle upon which Mr. Justice Killam dissented from the rest of the court is also sound, and for that reason, even admitting the imposition to be interest, the local legislature has full power to pass it. I was in hopes that the particular case in point, *Schultz vs. The City of Winnipeg*, could have been taken to the Supreme Court. As you will probably have noticed there is another point in that case upon which the judges here are unanimously in favour of the plaintiff, and which is of no general importance to the people at large. I am endeavouring at present to get hold of a case which will raise the point, with a view of taking it up as a provincial matter, and go to the Supreme Court at the earliest possible moment.

Till the matter which is of such very great importance has been before the highest court I feel quite justified in becoming responsible for the section in question. In view of the result of appeals from this court to the Supreme Court in the past, we are scarcely justified in relying very much on a decision of this court.

I have, &c.,

JOSEPH MARTIN,  
*Attorney General.*

*Petition from residents of Town of West Lynne to the Hon. the Minister of Justice, re chapter 47.*

WEST LYNNE, MANITOBA, 10th August, 1889.

The petition of the inhabitants of the old town of West Lynne, now forming part of the town of Emerson, humbly sheweth :

That a bill (chapter 47) was passed at the last session held by the Manitoba provincial legislature, entitled "A bill respecting the town of Emerson."

That said bill unites West Lynne to Emerson, and by so doing West Lynne lost a separate corporate existence.

That said bill was enacted in spite of a petition signed by every resident, strongly protesting against this unwarranted and unsolicited interference with the wishes and desires of the people and our rights as a separate and distinct corporation.

That said petition, through the culpable neglect of our sitting member, Mr. James Thompson, M.P.P., was held by him and never presented to the legislature at the time assembled.

That, whilst existing as a separate corporation our municipal council had arranged for a settlement of the town's indebtedness with our creditors, which arrangement we had every reason to trust, and did fully believe would end in a successful settlement.

That this arrangement of our town's indebtedness cannot now be realized on account of the passing of the said bill by the Manitoba legislature at their last session.

Your petitioners, therefore, pray that your Honour will be graciously pleased to consider the injustice done to our town's rights, and have the said bill disallowed, and your petitioners as in duty bound will ever pray.

H. TENNANT and 32 others.

*Petition from Executors of Estate of late John MacLaren to His Excellency the Governor General in Council, re Chapter 47.*

*To His Excellency the Governor General in Council :*

The humble petition of James MacLaren, of Buckingham, in the province of Quebec, and William MacLaren, of Toronto, in the province of Ontario, executors of the estate of John MacLaren, deceased, humbly complaining, sheweth unto your Excellency as follows :—

Your petitioners are the duly appointed legal personal representatives of the said John MacLaren, now deceased.

Under and by virtue of certain Acts and by-laws hereinafter recited, the town of Emerson caused public notice to be given in various newspapers, of which the following is a true copy :

#### “PUBLIC NOTICE.

“Sealed tenders addressed to the undersigned (secretary-treasurer of the corporation of Emerson, province of Manitoba), and endorsed “Tenders for town debentures,” will be received up to 8 o'clock p.m. on Wednesday, 15th September, 1880, for the purchase of \$43,000 debentures of the town of Emerson, Manitoba. Tenders may be for part or for the whole amount. Population of town about 1,500. No other indebtedness existing. The highest, or any tender, not necessarily accepted.

“(Sgd.)

G. F. BALDWIN,  
“Secretary-Treasurer.”

24th August, 1880.

Under and by virtue of the statutes of the province of Manitoba, known as 42 Victoria, chapter 3, sections 371, 374, and 375, and 43 Victoria, chapter 30, section 2, subsection 3, and by virtue of a by-law of the town of Emerson, entitled a by-law to raise \$35,000 to be expended in the construction of an ordinary passenger and traffic bridge across the Red River at Emerson, and to authorize the issue of debentures of the town of Emerson therefor. The said town of Emerson executed and sold to your petitioners, as such executors as aforesaid, thirty-five debentures of the said town for the amount of one thousand dollars each, which bonds are dated the sixth day of September, one thousand eight hundred and eighty, and are payable on the sixth day of September, one thousand nine hundred, with interest at eight per cent half yearly on the first day of May and November in each year, and your petitioners have ever since the year one thousand eight hundred and eighty been, and still are, the owners of the said bonds.

4. Under and by virtue of the statutes aforesaid, and of another by-law of the said town of Emerson entitled : “A by-law to raise by way of loan the sum of \$8,000 to be expended in payment of the purchase money for the steam fire engine heretofore purchased by the council, and to authorize the issue of debentures of the town of Emerson therefor,” the said town executed and sold to your petitioners, eight debentures of the said town, for the sum of one thousand dollars each, which debentures are dated the sixth day of September, one thousand eight hundred and eighty, and are payable on the sixth day of September, one thousand nine hundred, with interest at eight per cent half yearly on the first day of May and the first day of November in each year, and your petitioners have since the year one thousand eight hundred and eighty, remained and still are the owners of the said debentures.



5. No interest has been paid by the said town in respect of any of the said debentures since the first day of November, one thousand eight hundred and eighty-three.

6. At the time of the purchase by your petitioners of the said debentures, the said town of Emerson had no indebtedness, other than the indebtedness represented by the said debentures and the security of your petitioners was perfectly ample and satisfactory.

7. After the purchase by your petitioners of the said debentures, the said town of Emerson incurred other large debts, and became liable for very large amounts in respect of a railway bridge built across the Red River at the town of Emerson, and for other purposes.

8. The total indebtedness of the said town, prior to the said Act next hereinafter mentioned, amounted to more than the sum of three hundred thousand dollars.

9. By an Act of the legislative assembly of the province of Manitoba assented to on the fifth day of March, one thousand eight hundred and eighty-nine, and known as 52 Victoria, chapter 47, and entitled "An Act respecting the town of Emerson," provision is made for the issue by the said town of Emerson of debentures to the amount of one hundred and twenty-five thousand dollars, payable in twenty years, with interest at the rate of three per cent per annum, payable annually. It is further provided by the said statute that said debentures are to be delivered to the creditors of the said town pro rata, according to the amount of the claims of such creditors, which creditors thus receive the same percentage of the amount of debentures issued as the amount of his claim is to the total indebtedness of the town, as shown by a statement to be prepared according to a certain method by the clerk and treasurer of the town.

10. It is further provided by the said statute that it shall not be lawful, while this Act continues in force, for the sheriff, or bailiff, or any other officer, to seize or make any levy upon the property of the said town, or of the school board for the said district, nor shall any proceedings be taken against the said town or school board or the trustees of the said school district or council of the said town or against any officer or employee of the said school board or said council for the purpose of enforcing either against the property or revenues of said town or school district claims for debts incurred by said town or school district prior to the passing of the said Act; or for interest thereon except so far as the said Act provides for payment of the same.

11. It is further provided by the said statute that the said Act should come into force upon the proclamation of the Lieutenant-Governor in Council.

12. The said Act has been proclaimed by the said Lieutenant-Governor in Council and is now in force.

13. Your petitioners are advised that the effect of the said statute is to deprive your petitioners of any right of action in respect of the said debentures so held by them as aforesaid, and in fact to nullify the said debentures, and to relieve the said town of Emerson from payment thereof, your petitioners being compelled to accept other debentures payable in twenty years with interest at three per cent per annum for an amount not exceeding twenty-five per cent of your petitioners claim.

14. Your petitioners are the persons referred to in the preamble of the said statute "as the one person" who is unwilling to accept the terms of the said statute. And your petitioners opposed the passage of the said statute in every way in their power.

15. Your petitioners are perfectly satisfied with the security which they hold, if unaffected by legislation, and have never taken any proceedings against the town either at law or otherwise.

16. Your petitioners, relying on the integrity of the legislature of Manitoba in passing an Act authorizing the issue of said debentures—which Act subsequently received the sanction of his Excellency the Governor General in Council—invested trust funds, in good faith, in the purchase of said debentures by public tender at a premium. Therefore, your petitioners respectfully submit that if the legislature of Manitoba is permitted to repudiate its solemn obligation in this regard, no provincial authorization of any municipality or other debt can hereafter be looked upon other than as a trap for innocent investors, thereby effectually destroying provincial credit.

17. Your petitioners further submit, that the provisions of the said Act are grossly unjust and are destructive of all faith and confidence in Manitoba securities, subversive of the best interests of our municipal institutions and contrary to the public policy.

Your petitioners therefore pray that the said Act may be disallowed.

JAMES MACLAREN, }  
WM. MACLAREN. } Executors.

Dated at Buckingham the tenth day of August, 1889.

*Petition from property owners and former residents of Emerson to His Excellency the Governor General in Council, re chapter 47.*

*To His Excellency the Governor General in Council :*

The petition of the undersigned, property owners and former residents of Emerson, Manitoba, now residents of Vancouver, British Columbia, humbly sheweth :—

1. That they are interested in the town of Emerson, Manitoba, as property owners and former residents, and anxious for the prosperity and success of said town.

2. That in 1879-80-81-82, Emerson was a prosperous town, doing a large business with the country west of Red River in Southern Manitoba as far as Turtle Mountain ; that in order to facilitate this trade the town went into debt to construct a free traffic bridge over Red River and to make other public improvements ; that later, in order to hold this trade, a company was organized to construct a railway west from Emerson to the Turtle Mountain district, and application was made to the Dominion parliament for a charter, but said application was refused, on the ground that the policy of the Dominion government was to make all railways in the Canadian North-west feeders to the main line of the Canadian Pacific Railway ; that later, a charter was secured from the provincial legislature for said railway, and several thousand dollars was expended in grading and the purchase of material, but the enterprise was killed by the disallowance of the Act by your Excellency's government ; that in consideration of the promoters of the enterprise not applying to the provincial legislature for a re-enactment of the charter, the Canadian Pacific Railway Company agreed to construct a line west from Emerson to a connection with their Pembina Mountain Branch, the town of Emerson, as a further consideration, to construct a railway and traffic bridge over Red River for the exclusive use of the Canadian Pacific Railway, that the promoters of the railway and the town of Emerson carried out this agreement, the town of Emerson, upon its part, constructing a bridge and acquiring right of way at a cost of over \$225,000 ; that owing to the bridge not being completed at the date fixed upon in the agreement between the town and the Canadian Pacific Railway Company, the latter took advantage of the fact and took up the track it had laid and tore down the telegraph line it had erected, thus leaving the town without western railway connection ; that owing to this fact and the huge debt contracted by the town in its efforts to secure railways to the west and hold trade that had been built with the country west, and through the loss of said trade by the construction of lines of railway south-west from Winnipeg, the town of Emerson began to go down, and your petitioners, among many others of its citizens, were obliged to go elsewhere for a means of livelihood.

3. That with the huge debt (something over \$350,000), which has for years hung over the town, there was no prospect and no possibility of its ever recovering, as people could not be induced to go in there and start business enterprises, with the prospect of paying high taxes and perhaps being sold out by the sheriff on judgments held by the creditors of the town, that for years the citizens of Emerson have been endeavouring to remove the incubus of this huge debt from the town, through a compromise with the creditors of the town, that legislation which would enable them to do this was secured from the legislature of Manitoba during the Norquay regime and again at the last

session of the legislature, that under an Act passed at said session (1888) the towns of Emerson and West Lynne have been amalgamated under the title of the town of Emerson, and an arrangement has been effected by which all the creditors, except one, have agreed to compromise their claims at about 32 cents on the dollar, said compromise claims to be liquidated by the issue of town bonds to the amount of \$105,000, payable in 20 years and bearing interest at the rate of 3 per cent per annum, which interest is guaranteed by the provincial government.

4. That your petitioners learn with regret that Mr. MacLaren, of Ottawa, one of the creditors of the town, is the only creditor who has refused to accept this—under the circumstances—most favourable compromise, and that he has petitioned your Excellency's government to disallow the Act of the Manitoba government and legislature above referred to.

5. That unless the proposed compromise settlement is carried out, there is little possibility of any of the creditors of the town ever recovering anything, but the disallowance of the Act above referred to, would be a great hardship to the property owners of Emerson, many of whom, like the undersigned, hope, under the proposed arrangement—by which the debt of the town is reduced to an amount which it will be able to pay—to see the town recover from its present bankrupt and depressed condition, thereby enabling them to either realize upon, or return to, property in which the savings of years have been invested, and homes upon which money and years of care and attention have been bestowed.

Your petitioners, therefore, humbly pray, that your Excellency and honourable advisers will not disallow the Act above referred to, but will permit it to remain in force.

And your petitioners, as in duty bound, will ever pray.

DAVID EVANS, and 200 others.

August, 1889.

*Honourable Attorney-General Martin to the Honourable the Minister of Justice.*

WINNIPEG, MAN., 12th November, 1889.

Sir,—I have received from your department a copy of a petition of H. Tennant and others, citizens of West Lynne, and of James MacLaren, praying for the disallowance of cap. 47, 52 Vic. If you have not already read that Act, I would refer you to it. You will find under it that the government here have assumed very considerable obligations in connection with the town of Emerson. So far as the inhabitants of West Lynn are concerned, I am quite satisfied that they will receive no injury from the operation of the Act, and in fact quite the contrary. So far as Mr. MacLaren is concerned, it seems to me that unless this Act is allowed to take its course or some similar provision made, he will never realize anything upon his bonds. The town is hopelessly bankrupt. Of course I need not repeat the arguments addressed to you so often as to your right to interfere in connection with the statute, upon the ground of its being unfair. In connection with this particular statute the question of its constitutionality may, however, be raised. I have been urged by a number of the creditors of West Lynne and Emerson, who are most anxious that the Act should go into force, to write you and endeavour to get from you an expression of your intention as to this Act. If it is to be disallowed, the government do not wish to allow bonds to be issued with their guarantee on them. On the other hand, it is a matter of serious inconvenience to the creditors to be obliged to wait until the expiration of the year allowed for disallowances. If you would kindly decide the matter now you would confer upon those creditors and upon the townspeople generally, a great favour.

I have, &c.,

JOSEPH MARTIN,  
*Attorney General.*



*Municipal Council of the Town of Emerson, to the Hon. the Minister of Justice.*

EMERSON, MAN., 28th November, 1889.

SIR,—By resolution of the council of the town of Emerson, we are directed to write you with a view to obtaining, if possible, an expression of intention of the Dominion government as regards the disallowance of the Act passed by the legislature of this province, assented to in March last, 52 Victoria, chapter 47, under which this town was authorized to issue bonds for the purpose of compromising its corporate indebtedness. In pursuance of such resolution we beg to present the following facts:—

1. The town of Emerson and West Lynne had incurred a very large indebtedness, principally in constructing a railway bridge across the Red River, in order to complete a line of railway constructed by the Canadian Pacific Railway Company, connecting said towns with their Gretna branch with a view to enabling the said towns to still compete for the trade which the construction of said branch to Gretna had cut off from them, but which bridge has never been used for railway purposes, owing to the refusal of the said company to operate said connecting line of railway.

2. In consequence the said towns have rapidly lost their commercial position and from a joint population of 3,500, have become reduced to one at present not greater than 600, and those who still remain are principally property owners who have invested all their capital in said towns, and are relying upon a settlement of said debt.

3. By an Act of the legislature of this province, 50 Victoria, chapter 39, it was provided that commissioners might be appointed to inquire into the financial condition of certain municipalities therein named, amongst which were the towns of Emerson and West Lynne, and for the issue of debentures and a provincial guarantee of interest thereon, to be issued in extinguishment of the indebtedness of such municipalities. At considerable expense to the two towns, such commissioners' reports were obtained and adopted by the unanimous vote of the people.

4. By the Act of last session, 52 Victoria, chapter 47, the two towns were united into one town and provision was therein specially made for the settlement of the joint indebtedness, by the issue of bonds of the new town, to an amount based upon the report of the commissioners, the interest upon which bonds the province was authorized to guarantee, and by means of which it has become possible for the present town to extinguish its debt, upon procuring the said provincial guarantee of interest.

5. This said Act, however, is still in suspense, as the government of this province, after a lapse of eight months, decline to grant the said provincial guarantee as to interest, until assured that it is not the intention of his Excellency the Governor General in Council to veto the said last mentioned Act. Meanwhile the whole municipal machinery is paralysed, the schools are in danger of being closed, as taxpayers are indifferent about meeting their assessments whilst the present uncertainty exists; and, unless such an expression as above can be procured, the town will still be left to struggle under the indebtedness referred to, which it is utterly unable to pay, and the result must be the early removal of the present population, and the total loss to a large number of persons of the moneys they have invested in the town.

The corporation of the town of Emerson, therefore, respectfully urge upon you the, vital necessity to them, of having the Act dealt with without further delay. We pray most earnestly that, for the salvation of the town and to insure a fresh start in our history, you do cause the Act last mentioned to be allowed and that such allowance be communicated to the council of this town and to the provincial government at the earliest possible date.

We have, &amp;c., &amp;c.,

D. H. McFADDEN,  
Mayor.W. W. UNSWORTH,  
Clerk.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th March, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st March, 1890.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report on chapter 45 of the Acts passed by the legislature of the province of Manitoba held in the 52nd year of Her Majesty's reign (1888-89) a certified copy of which was received by the Secretary of State on the eleventh day of March, 1889, intituled: "An Act to further amend chapter 52 of 49 Victoria, being the Manitoba Municipal Act 1886, and amendment."

Section 5 of this Act is as follows:—

"Beginning with and during the year 1887 the city of Winnipeg had power to add to all arrears of taxes then due upon any land in the said city on the last day of each month a sum equal to three-fourths of one per cent of such arrears.

"Upon and after the first day of January, 1888, and hereafter the said city had and has, and hereafter every other city shall have, power to add to all arrears of taxes then due and thereafter and hereafter due upon any lands in the said city on the first day of each month a sum equal to three-fourths of one cent per cent of such arrears.

"The taxes for any year hereafter shall not be subject, however, to such additional charge until after the thirty-first day of December of the year in which the same is levied.

"Section six hundred and twenty-six of said chapter fifty-two shall be read as if it always contained the declaration of intention hereinbefore set forth.

"This section shall not affect any pending suits."

Section 22 is as follows:—

"No sale of any lands for arrears of taxes heretofore or hereafter made under the provisions of any statute of this province, shall be impeached or set aside or held to be invalid on the ground that a rate of percentage, whether by way of increase or interest or otherwise was added to the original amount of taxes, and form part of the claim for arrears for which the lands were sold. The Court of Queen's Bench of Manitoba shall not have jurisdiction to impeach any sale for alleged arrears of taxes on the ground set forth in this section. This section shall not apply to cases in which prior to the fifth day of March, A.D. 1889, suits in equity were instituted, affecting any such sale on the said grounds or any of them."

It appears that prior to the passing of this Act an action had been brought against the city of Winnipeg, in the Court of Queen's Bench, Manitoba, for the purpose of obtaining a decree restraining the city of Winnipeg from selling certain property for taxes, upon the grounds that such addition as is authorized by the Act had been made under the authority of a previous Act of the province of Manitoba and that such addition was in reality an illegal charge for interest. It was claimed in that suit that the legislation authorizing such addition was *ultra vires* of the provincial legislature, inasmuch as it was legislation respecting interest, which by section 91, art 19, of "The British North America Act," is one of the subjects over which the Dominion parliament has exclusive jurisdiction, and that parliament had fixed the legal rate of interest at 6 per cent in the absence of agreement between parties. The case was heard before the chief justice of Manitoba in November, 1888, and an injunction was granted restraining the sale upon the ground that the legislation referred to was unauthorized. The Act now under review was passed to over-ride that decision. It will be observed that the Act expressly provided that the sections in question should not apply to cases in which suits in equity were then pending. The decision of the chief justice was appealed from and two days after the passage of the Act now under review, the Court of Queen's Bench gave judgment on the appeal sustaining the decision of the chief justice, Mr. Justice Killam dissenting. In delivering judgment, Mr. Justice Bain referred to the legislation in question in the following terms:

"This section passed, as it was while the question was still *sub-judice*, seems to have been practically and frankly not only that the added rate was interest, but also that the legislature had exceeded its powers in imposing it, for if the addition had been legal and valid, there could be no object whatever in thus legislating in reference to it, and here I feel compelled to express my deep regret that the legislature should have allowed itself to be induced to grant such legislation. If, as has manifestly been assumed, the imposition of the rate was illegal, then the attempt has been made by this section to take away from those who have been arbitrarily and illegally dispossessed of their property their right of applying to the court for redress. If the rights and securities of property are to be preserved, this is a right which cannot be lightly interfered with, and the existence of this section in the statutes passed, apparently as it has been passed, in the interest of a few and in derogation of the rights of citizens generally, is in my opinion a reproach to a province that claims to enjoy free institutions."

Mr. Justice Killam, although dissenting from the opinion of the court on the legal question involved in the appeal, said:—

"Having had the advantage of a perusal of the judgment about to be delivered by my brother Bain, I desire to express my concurrence in his remark upon the character of the legislation of the last session of the legislature assuming that a stroke to take away rights of property which the chief justice had already in this very suit declared to exist."

Since the delivery of this judgment applications have been made by various individuals and associations, praying for the disallowance of the Act.

It may now be assumed in consequence of the decision of the highest court in Manitoba that the imposition of the additional percentage referred to in this section was *ultra vires* of the provincial legislature. If it be so, the subsequent enactment which is now under review, is open to the same objection and the legislature cannot make such legislation *intra vires* by prohibiting the courts from deciding on the question. In the opinion of the undersigned it would tend to great confusion and injustice to have no tribunal in the province having jurisdiction to give protection to rights which the highest court in the province has declared to exist. A provincial legislature cannot thus add to its powers or acquire control over subjects of legislation which are within the powers of the Canadian parliament.

In the view of the undersigned, this is a case in which the power of disallowance should be exercised. It is very much to be regretted that these sections above cited instead of forming an independent Act, are but sections of an Act comprising 23 other important sections affecting municipalities in Manitoba.

The undersigned, notwithstanding this, feels bound to recommend that the Act in question be disallowed.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 15th day of March, Vol. XXIII., No. 37, page 1852.*

*Report of the Honourable the Minister of Justice, approved of by His Excellency the Governor General in Council on the 22nd May, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, March 3, 1890.

*To His Excellency the Governor General in Council:*

Having carefully considered the Acts chapters 1, 3, 4 to 10, 12 to 18, 20 to 38, 39, 40, 41, to 44, 46, 47, 48 to 50, 52 to 54 inclusive, passed at the first and second sessions of



the seventh legislature, in the province of Manitoba, held in the fifty-second year of Her Majesty's reign, 1888-89, the undersigned has the honour to recommend that they be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Note.—Chap. 11 intituled: "An Act to amend the County Courts Act, 1887," does not appear to have been reported upon.*

*Report of the Honourable the Minister of Justice approved of by His Excellency the Governor General in Council on the 22nd May, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, March 3, 1890.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report on the following Acts passed by the legislature of the province of Manitoba at its first and second sessions, seventh legislature, held in the 52nd year of Her Majesty's reign (1888-89), a certified copy of which statutes was received by the Secretary of State on the 11th of March, 1889.

Chapter 2. "An Act respecting the Northern Pacific and Manitoba Railway Company."

The principal object of this Act is to confirm an agreement, purported to be executed between Her Majesty acting through and represented by the railway commissioner for the province, and the Northern Pacific and Manitoba Railway Company, and to confer certain powers upon such company.

Clause 4 of the Act purports to authorize the company to construct, maintain and operate certain railways in the province of Manitoba, and among other things the railway known as the Red River Valley Railway, located between the international boundary line and the city of Winnipeg.

The agreement which the Act purports to ratify provides that the railway commissioner for the province shall construct the Red River Valley Railway from the international boundary line at the northern terminus of the Duluth and Manitoba Railway (a railway within the territory of the United States) to the city of Winnipeg.

Having in view the provisions of section 92 of "The British North America Act," art. 10, which permits a province to enact laws in respect to local works and undertakings, except lines of railway connecting the province with any other or others of the provinces, or extend beyond the limits of the province, it is questionable whether a provincial legislature may incorporate a company to build a railway such as the "Red River Valley Railway" appears to be. The Act, however, gives the company power to build other lines of railway, which are clearly provincial or local undertakings, and the undersigned is of opinion that the Act should be left to its operation.

Chapter 19. "An Act to provide for the crossing of one railway by another."

Section 1 of this Act provides that "No railway company, whether incorporated by the parliament of Canada or otherwise, shall cross, intersect, join or unite its railway with any railway subject to the legislative authority of the legislature of Manitoba without first obtaining the approval of the railway committee of the executive council of the province of Manitoba as to the place and mode of crossing, intersection, junction or union proposed. Ten days' notice in writing of the application to such committee shall be given by the company to any such company affected by sending the same by mail or otherwise to the address of the president, superintendent, general manager, managing director or secretary of such company."

The undersigned entertains doubts as to whether a provincial legislature may by legislation of this character, interfere with the construction of a railway which is author-

ized to be built by the parliament of Canada. The question, however, is a purely legal one, and it does not appear to the undersigned, in view of the fact that it may be without serious inconvenience, settled by the courts proper, that the right of disallowance should be exercised

Chapter 39, "An Act to repeal chapter 40 of 50 Vic., being 'An Act to provide for the granting of aid to the Winnipeg and Hudson's Bay Railway and Steamship Company.'"

By chapter 40 of the Acts of 1887, the government of Manitoba were authorized to guarantee the bonds of the Winnipeg and Hudson's Bay Railway and Steamship Company, upon the terms and conditions mentioned in the Act.

The Act prescribes the form of the guarantee, which form was to be printed or written on each bond, and signed by the provincial treasurer.

The Act now under consideration repeals chapter 40 above referred to.

Representations have been made by a firm of London solicitors that they represent certain bond holders of the railway company, who advanced money on the faith of the Manitoba government guarantee authorized by the repealed Act, and a request has been made that the repealing Act should be disallowed.

It is not alleged that any guarantee under the provisions of the Act was ever in fact made, and it seems that no bonds bearing such guarantee were ever issued.

Under these circumstances it seems clear that the legislature of Manitoba had a right to withdraw from the executive the power to give the guarantee.

The undersigned, therefore, recommends that the Act be left to its operation.

Chapter 40 "An Act respecting the town of Minnedosa."

Chapter 47 "An Act respecting the town of Emerson."

These two towns appear to have been in a state of insolvency, without any prospect whatever of being able to pay their liabilities in full. These Acts give the corporations power to raise certain sums of money by the issue of debentures for the purpose of paying a certain portion of the liabilities of each town to its creditors, the government of the province guaranteeing the payment of such debentures at maturity. Before the Acts were passed, so far as the undersigned is aware, the principal creditors of both towns agreed to accept the proposed settlement. One creditor of the town of Emerson alone objected, and has asked for the disallowance of the Act in reference to that town, principally on the ground that the Act is an interference with the law of contract, and, in so far as he is concerned, in effect an act of confiscation. But no suggestion has been made that the liabilities of these towns would by any possibility be enforced in full, and the legislature of Manitoba seems to have considered it better that one of many creditors should suffer, than that all should be practically prevented from getting any payment whatever.

Legislation of this character must prejudicially affect the credit of municipalities in Manitoba, by showing that the investment of capital in that province is more precarious than it has hitherto been in any other part of Canada. The legislature of Manitoba, has, no doubt, fully considered this phase of the question. It has the responsibility of legislation relating to municipalities within the province, and this enactment seems to be within its competence, under several of the subjects enumerated in the 92nd section of The British North America Act.

The undersigned would, however, refer to the fact that section 23 of the Minnedosa Act, and section 28 of the Emerson Act, prohibits any sheriff or bailiff from making any levy on the property of the town, or any proceedings being taken against the town for the purpose of enforcing claims incurred prior to the passing of these Acts, and the undersigned would respectfully suggest, with a view to the ultimate protection of such creditors as have refused to accept the compromise provided for, that when the debentures are paid, and the claims of all assenting creditors thereby satisfied, the rights of non-assenting creditors to payment may revive in respect to a proportion of their claims, equal to that received by the assenting creditors. An amendment of this character would remove in part some of the strongest objections to the character of the legislation.

The undersigned respectfully recommends that these two Acts be left to their operation.

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Chapter 51.—“An Act to incorporate ‘The Selkirk Eastern and Western Colonization Railway Company.’”

This Act authorizes the construction of a railway from the town of Selkirk running south-easterly to a point at the south-east corner of the province, and north-westerly to the north-west corner of the province.

This is an undertaking to which the observations hereinbefore made in reference to the Red River Valley Railway may be applied with equal force.

Section 3 of this Act authorizes the company to construct bridges, not being bridges over any navigable river or water, having been authorized by an order of the Governor General in Council. This clause is also an infringement, in the opinion of the undersigned, upon the exclusive powers to legislate upon navigation, vested in the Dominion parliament.‡ As any proposal to construct any bridge over any navigable water will come before your Excellency in Council, and can then be checked, it would seem that no public interest necessitates the power of disallowance being exercised in respect to the Act.

The undersigned would, therefore, respectfully recommend that the same be left to its operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*



## MANITOBA, 53RD VICTORIA, 1890.

## 3RD SESSION, 7TH LEGISLATURE.

*His Honour the Lieutenant-Governor to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, WINNIPEG, 2nd April, 1890.

SIR,—I have the honour to inform you that on the 31st ultimo, before the prorogation of the third session of the seventh legislature, I reserved for the signification of the pleasure of his Excellency the Governor General, two bills, viz:—

A bill (No. 66) respecting Sales of Land for Taxes, and

A bill (No. 75) affecting arrears of Taxes in the city of Winnipeg.

The certified copies of these bills, received by me from the honourable the Provincial Secretary, too late for transmission by the mail of yesterday, are herewith enclosed, and I beg to submit for his Excellency's consideration the following:—

1. That a comparison of the inclosed bills with the clause of cap. 45 of 52 Victoria, to which objection was taken by the honourable the Minister of Justice in his report of 1st March, 1890, to his Excellency the Governor General in Council, shows them to be virtually and nearly word for word re-enactments of the clause of cap. 45 of 52 Victoria referred to.

2. That in the absence of any specific or general instruction, I should be guided as to the question of *ultra* or *intra vires* by the considerations which caused the disallowance of cap. 45, of 52 Victoria, as these are given in the report of the honourable the Minister of Justice, a copy of which is hereto annexed.

3. That, having regard to the report in question my assent to the inclosed bills might be construed as insulting to the highest Manitoba court, and a disregard of his Excellency's action taken upon the advice of his Privy Council, in the disallowance of cap. 45 of 52 Victoria.

4. That apart from these considerations, it seemed incumbent upon me to take into consideration the fact that the present is about the period of the municipal year when the assessment of the values of taxable property has been completed, and the consideration of probable revenue and expenditure begun, and that to allow the bills herewith inclosed to become law, even for a time, was calculated to lead to errors in the one, and extravagance in the other, with consequent confusion of municipal accounts, and injustice to individuals who would be debarred from redress in the courts of the province.

Under these circumstances, and in the belief that my action was calculated to foster that respect for the decisions of our courts, so necessary in a comparatively new country, and that obedience to federal authority, without which the Dominion cannot prosper, and that moreover I was acting in the best interests of the province, I reserved assent to the inclosed bills.

I have, &c.,

JOHN SCHULTZ,  
*Lieutenant-Governor.*

*Memorial to His Excellency the Governor General from the Municipal Council of the City of Winnipeg.*

*To His Excellency the Right Honorable Sir Frederick Arthur Stanley of Preston in the County of Lancaster in the Peerage of Great Britain, G.C.B., Governor General of Canada, &c., &c., &c., in Council.*

The memorial of the city council of the city of Winnipeg in council assembled. Humbly sheweth.

1. That on the prorogation of the legislative assembly of the province of Manitoba on the thirty-first day of March last, his Honour the Lieutenant-Governor reserved two bills which had been passed by the assembly for the consideration of his Excellency the Governor General in Council, said bills being entitled one "An Act respecting sales of land for taxes" the other "An Act affecting arrears of taxes in the city of Winnipeg."

2. By the Manitoba Municipal Act 1886, section 626, it was provided that on the first of March in each year there should be added to all arrears of taxes, ten per cent of the amount. This applied to rural municipalities. The city of Winnipeg chose to ask for what seemed a more reasonable method of charging interest, namely, by adding three fourths of one per cent to the taxes each month, thus making nine per cent per annum. This per annum. This percentage was not compounded, but was charged simply upon the amount of the taxes as they appeared when the rate was struck, and the city desired to follow this method, as it seemed not so harsh as the adding the whole per centage for a year at a fixed and arbitrary date.

3. In 1888 certain amendments to the Municipal Act were passed, one of them changing the time when the said three fourths of one per cent was to be charged, from the first to last day of each calender month, and by a construction of this clause overlooked at the time, it would appear that the city's right to charge interest beginning in January, 1887, was taken away from it, and possibly no such right allowed until 1st January, 1889, it was to rectify this state of things that section 5, chapter 45, 52 Victoria, Manitoba, was passed by the legislature which, upon disallowance of the Act containing same, is contained in the bill "An Act affecting arrears of taxes in the city of Winnipeg."

4. As to the other Act, your memorialists admit that the legislation may seem strained, but it was for the purpose of avoiding the hopeless confusion which would otherwise result that it was asked for from and unanimously passed by the legislature. Gentlemen of the legislative assembly on both sides of the house explained that scarcely a single one of Manitoba's one hundred municipalities would escape difficulty and serious trouble, unless the power to charge interest could be exercised, and its exercise for the past three years be made valid and binding, and your memorialists are able to state with confidence that no dissenting voice or opinion on this subject was expressed, by any member of the legislative assembly.

5. Your memorialists also desire to point out that the corresponding clause of chapter 45 (being section 22) of 1889 was not *ultra vires*. In observations of Sir John Thompson, Minister of Justice, on that Act, he did not declare it to be so, but pointed out the impropriety of legislation which prevented action by the courts. Your memorialists would respectfully urge that while as a general principle such legislation should be avoided, yet the urgency of the case in Manitoba required an efficient remedy.

That the legislation is *intra vires* is supported by the fact that in June, 1889, his lordship, Mr. Justice Killam, held that the courts were bound by it, and refused a plaintiff relief against tax sale.

6. Your memorialists further urge that the opinion of the court of Queen's bench for Manitoba as to percentages or penalties added to taxes, coming within the meaning of the word "interest" in subsection 19 of section 91 of the British North America Act as belonging to the Dominion parliament, was not a unanimous decision, one of the three judges of the full court holding that the power to impose such percentages was a necessary part of the working of municipal institutions in the province, which under

section 92 of said Act is given to the various local legislatures and your memorialists are informed that it is the opinion of eminent lawyers, both in this province and in the older provinces, that upon a proper case being carried to the highest tribunals this view of the law would prevail. Your memorialists, however, feel that they are not in a position to submit a case unless at least the Act "An Act affecting arrears of taxes in the city of Winnipeg" should be allowed to go into force, as otherwise it would be doubtful whether the legislature has purported to grant the powers asked for.

7. Your memorialists would further urge that the right of adding a percentage upon taxes to the amount aforesaid is only fair and reasonable. The nine per cent per annum is only slightly in excess of the current rates of interest in the province of Manitoba, and even when collected, it no more than pays the city of Winnipeg for the loss caused by delay, and for the extra trouble involved in making the collections and in the necessary book keeping and accounting.

8. If nine per centum cannot be added, on the ground that interest is not within the jurisdiction of the legislative assembly, then no percentage at all can be added to the taxes. This would in practice be manifestly unfair, because it would offer a premium to the tardy tax payer. In the province of Ontario the statute law provides that ten per cent be added to the arrears of taxes on the 1st day of May in each year, but in addition to this, certain classes of the municipalities have the right to provide by by-law that, if the taxes accruing due in any year are not paid by a certain date, within that year, then the amount of five per cent is added to the taxes, thus making a penalty of fifteen per cent on arrears of taxes by the time they have been six months in arrear. That this power is possessed by the sister province owing to their having enjoyed municipal powers prior to the date of confederation, does not make the case any less inequitable for the municipalities in the province of Manitoba.

9. Your memorialists would therefore submit that if the difficulty cannot be removed by the allowance of the local legislation of Manitoba, provision should be made in the statutes of the Dominion for the charging of interest in respect of taxes, but in as much as interest for past years has been charged, and collected at the above rate in the manner hereinbefore set out, the city officers would still be involved in difficulty and confusion and possibly litigation. Your memorialists would respectfully urge that the two bills above named which have been reserved should be approved, and that in any case the bill "An Act affecting arrears of taxes in the city of Winnipeg" should be allowed to come into force."

10. In the above your memorialists have used the term interest, interchangeably with percentage or penalty, which latter term they are advised is the correct one.

Your memorialists therefore pray that you may be pleased to make provision for coming into force of the said Acts.

And your memorialists will ever pray.

ALFRED PEARSON,  
*Mayor.*

C. W. BROWN,  
*City Clerk.*

WINNIPEG, 22nd April, 1890.

*Petition of Pioneer Assembly Knights of Labour to His Excellency the Governor General.*

MAY IT PLEASE YOUR EXCELLENCY :

The humbly petition of Pioneer Assembly Knights of Labour, of Winnipeg, Manitoba, humble sheweth :

That your petitioners, in the spring of 1889, forwarded a humble petition to your Excellency in Council praying that an Act entitled an "Act to further amend chapter 52 of 49 Victoria, being the Municipal Act of 1886 and amendments (Manitoba)" might be disallowed.



And whereas your petitioners learned with satisfaction that your Excellency (in Council) had disallowed the said Act.

And whereas the legislature of the province of Manitoba at their last session, passed two Acts, one entitled "An Act respecting sales of land for taxes," the other "An Act affecting arrears of taxes in the city of Winnipeg" and that his Honour the Lieutenant-Governor of Manitoba on the 30th day of March last, referred the same for the consideration of your Excellency in Council.

And, whereas, the assenting to the two Acts referred to, would create the cause of complaint and injustice to which your petitioners in their previous petition referred and desired, should be prevented.

And, whereas, the system of tax legislation in Manitoba generally, and the manner of the collection of taxes, and the arbitrary sales of land for arrears of the same, have been fraught with, in numerous cases, gross injustice and hardships (many individual cases being under the knowledge of your petitioners) and have been inimical to the interests of the province, depriving persons unjustly of their lands, and reducing the fair value of property, and encouraging the unscrupulous land speculator in his greed to acquire lands at a nominal price, and accomplished by means which could not be allowed in England or in other portions of the Empire.

Your petitioners, therefore, humbly pray :

That notwithstanding the inconvenience and alleged confusion which may be caused to the municipal officers of the city of Winnipeg, and in the rural municipalities in Manitoba, and in view of the injustice which has already been perpetrated in the name of the law, your Excellency (in council) will be pleased to direct the Lieutenant-Governor of Manitoba to refuse his assent to the two bills of the provincial legislature above referred to, or to give such other directions, as may seem best to your wisdom, to prevent the said bills from becoming law.

And your petitioners will ever pray.

Signed on behalf of Pioneer Assembly, Knights of Labour in Winnipeg, Manitoba, and whose seal is hereto affixed, this 3rd day of May, in the year of our Lord 1890.

FRED J. NIXON,  
*Act. Rec. Sec.*

W. ALBUTT,  
*Master Workman.*

*His Honour the Lieutenant-Governor of Manitoba to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, WINNIPEG, 31st March, 1890.

SIR—I have the honour to transmit, herewith, copies of certain representations made to me by Honourable James E. P. Prendergast, M.P.P., for Woodlands, on behalf of the present M.P.P's. for Carillon, Cartier, LaVerandrye, Morris, St. Boniface and himself, regarding certain bills : viz. :—

"An Act to provide that the English language shall be the official language of the province of Manitoba."

"An Act respecting Public Schools," and

"An Act respecting the Department of Education," passed during the third session of the seventh provincial legislature, to which assent was given this day by me.

I have,

JOHN SCHULTZ,  
*Lieutenant-Governor.*

*Mr. J. E. P. Prendergast, M.P.P., to His Honour the Lieutenant-Governor.*

WINNIPEG, 27th March, 1890.

SIR,—On behalf of the honourable members for Carillon, Cartier, La Verandrye, Morris and St. Boniface, and of myself, I beg leave to respectfully represent to your Honour that the legislative assembly at this present session, being the third session of the seventh legislature, has passed a bill intituled, "An Act to provide that the English language shall be the official language of the province of Manitoba," and to most humbly submit that the said bill is *ultra vires*, for reasons more fully set forth in the memorandum hereto annexed.

I have, &c.,

JAMES E. P. PRENDERGAST,  
*Member for Woodlands.*

*Memorandum respecting a Bill intituled "An Act to provide that the English language shall be the Official language of the Province of Manitoba."*

It is submitted that section 133 of "The British North America Act, 1867," which applies to the parliament of Canada and the legislature of Quebec, is similar to, and drafted in the same words, *mutatis mutandis*, as clause 23 of "The Manitoba Act," applying to the legislature of Manitoba, and that any interpretation attaching to the former should also attach to the latter.

#### THE BRITISH NORTH AMERICA ACT, 1867.

Section 133 of the above Act reads as follows :—

"Either the English or the French language may be used by any person in the debates of the House of Parliament of Canada, and of the house of the legislature of Quebec : and both these languages shall be used in the respective records or journals of those houses, and either of those languages may be used by any person in any pleading or process. The Acts of the parliament of Canada and of the legislature of Quebec shall be printed and published in both languages."

The spirit which has presided to the enacting of the above clause is fully illustrated by the reports of the debate on confederation.

Hon. Mr. Evantured (page 943) says :—

"I wish to put a question to the government. I acknowledge that if I confined myself to consulting my own ideas, I should not put this question ; but I do so in order to meet the wishes of several of my friends, both within this house and beyond its precincts. Those friends have expressed alarm in relation to one of the clauses of the resolutions, and have requested me to ask an explanation from the honourable Attorney General for Upper Canada as to the interpretation of that clause. I have, therefore, to ask him whether Article 46 of the resolutions, which states that both the English and French languages may be employed in the general parliament and its proceedings, and in the local legislature of Lower Canada, is to be interpreted as placing the use of the two languages on an equal footing in the Federal parliament. In stating the apprehensions entertained by certain persons on this subject, I hope the government will not impute to me any hostile intention, and will perceive that the course I adopt is in their interest, as it will give them an opportunity of dissipating the apprehensions in question. (Hear, hear)."

Hon. Attorney General Macdonald answers as follows :—

"I have very great pleasure in answering the question put to me by my hon. friend for the county of Quebec. I may state that the meaning of one of the resolutions

adopted by the conference is this: that the rights of the French Canadian members, as to the status of their language in the Federal legislature, should be precisely the same as they now are in the provincial legislature of Canada in every possible respect. I have still further pleasure in stating that the moment this was mentioned in conference the members of the deputation from the lower provinces unanimously stated that it was right and just; and without one dissentient voice, gave their adhesion to the reasonableness of the proposition that the status of the French language as regards the procedure in parliament, the printing of measures, and everything of that kind, should precisely be the same as it is in this legislature."

It is admitted that the only thing promised after all in the above by the Hon. the Attorney General for Upper Canada is that the French language would be placed in the Federal parliament on the same footing it occupied then—that is, under the "Union Act."

It must be equally admitted that under the "Union Act," as originally drafted, the English language alone could be used in parliament; and that whilst, by 11 and 12 Vic. (Imperial), the two languages were subsequently put on a par, yet there was nothing in this amending Act making its object indefeasible—that is to say, that the use of the French language, although introduced, was yet left, as to its own continuance, to the will of the majority.

Having those facts in mind, the above declarations of the Attorney General for Upper Canada were not considered sufficient, and at the next page of the *Debates* Hon. (now Sir) A. A. Dorion is reported as saying:—

"If to-morrow the legislature chooses to vote that no other but the English language should be used in our proceedings, it might do so, and thereby forbid the use of the French language. There is, therefore, no guarantee for the continuance of the use of the language of the majority of the people of Lower Canada but the will and forbearance of the majority of parliament."

To which the Hon. Mr. Macdonald replies:—

"I desire to say that I agree with my honourable friend that, as it stands just now, the majority governs; but in order to cure this, it was agreed at the conference to embody the provision in the Imperial Act. This is proposed by the Canadian government for fear an accident might arise subsequently, and it was assented to by the deputation for each province that the use of French language should form one of the principles upon which the confederation would be established, and that its use, as at present should be guaranteed by the Imperial Act."

To the above declarations affecting more the Federal parliament, Hon. Attorney General Cartier adds further declarations affecting the province of Quebec. At the same page of the *Debates*, he is reported as saying:—

"I will add that it was also necessary to protect the English minority in Lower Canada with respect to the use of their language. The members of the conference were desirous that it should not be in the power of the majority to decree the abolition of the English language in the local legislature of Lower Canada, any more than it will be in the power of the Federal legislature to do so with respect to the use of the French language."

It is submitted that the following conclusions may be legitimately drawn from the above:—

1. That the official use of their language was solemnly guaranteed to the English-speaking minority of the province of Quebec in the local legislature.

2. That this guarantee was an indefeasible one, or in the words of Hon. Mr. Cartier, "that it would not be in the power of the majority to decree the abolition of the English language."

3. That this privilege of the minority should not be interpreted in its narrowest sense, but (in the words of Mr. Evanturel) as placing the use of the two languages on an "equal footing," or again (in the words of Hon. Mr. Macdonald) "as applying to the procedure in parliament, the printing of measures, and everything of that kind."

That all the phrases in the said section of the British North America Act, 1867, having, as joint subjects the Federal parliament and the legislature of Quebec, all



the declarations quoted as to the former must necessarily apply to the latter, and *vice versa*.

#### AMENDMENTS TO PROVINCIAL CONSTITUTIONS.

In case it should be contended that the legislature of Quebec has power to decree the abolition of the official use of the English language, by virtue of sub-clause 1 of clause 92 of the British North America Act, 1867, it is respectfully submitted that the words "the constitution of the province," used in the said sub-clause, apply only to such matters as are mentioned and provided for in division five (V) of the said Act, head "*V. Provincial Constitutions*;" and that the dual language claim, being not contained in the said division, it is beyond the power of the legislature of Quebec to amend it.

#### THE MANITOBA ACT.

It is respectfully submitted that inasmuch as clause 23 of the Manitoba Act is an absolute reproduction (*mutatis mutandis*) of clause 133 of the British North America Act, 1867, the standing of the French language in Manitoba is the same as that of the English language in Quebec, and that all privileges and disabilities in connection with the latter, are privileges and disabilities in connection with the former.

#### THE BRITISH NORTH AMERICA ACT, 1871.

It is further respectfully submitted that even had the legislature of Quebec, power to repeal the dual language clause of the British North America Act, 1867, the legislature of Manitoba is stopped from altering the provisions of the Manitoba Act, by 34 of 35 Vic., cap. 28 (Imperial), also known as "The British North America Act, 1871," section 6 of which reads as follows:—

"Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act, 'The Manitoba Act,' subject always to the right of the legislature of the province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the legislative assembly, and to make laws respecting elections in said province."

#### A PRECEDENT.

It is further respectfully submitted that in 1879 Hon. (now judge) Walker, then Attorney General of Manitoba, introduced in this legislature a bill to abolish the printing in French of all public documents except the statutes. The journals of that year show that the said bill was read a first, second and third time, but the schedule of Acts assented to at the close of the session show that said bill is not therein included, and that it was not sanctioned.

Humbly submitted.

JAMES E. P. PRENDERGAST,  
*M. P. P. for Woodlands.*

*Petition from the French Canadian Convention, Manitoba, to His Excellency the Governor General.*

*To His Excellency the Governor General of Canada in Council:*

The petition of Her Gracious Majesty's subjects of French origin in the province of Manitoba, humbly sheweth.

That the seventh legislature of the province of Manitoba in its third session assembled, has passed (among others) an Act being fifty-three Victoria, chapter fourteen, intitled "An Act to provide that the English language shall be the official language of the province of Manitoba;"

That the said Act,—by providing in the first section that “any statute or law to the contrary notwithstanding, the English language only shall be used in the records and journals of the house of assembly for the province of Manitoba, and in any pleadings or process in, or issuing from, any court in the province of Manitoba,” and that “the Acts of the legislature of the province of Manitoba need only be printed and published in the English language,”—virtually provides for the abolition of the French language as an official language in the said legislature and in the said courts;

That the said Act is most vexatious to Her Majesty's subjects of French origin settled in Manitoba, inasmuch as its object is to deprive them of rights and privileges which they have uninterruptedly enjoyed and exercised, ever since the entry of the country into the union.

That the said Act constitutes a gross violation of the solemn pledges which were given to the French speaking population of Assiniboia at the time of its entry into confederation, and as such is contrary to the policy of your Excellency's government; and

That the said Act—as is more fully set forth in the memorandum hereto annexed, is a flagrant violation of “The British North America Act, 1867,” of “The Manitoba Act” and of “The British North America Act, 1871,” and is, as such, *ultra vires* of the legislature of Manitoba.

Your petitioners therefore pray—

That your Excellency in Council may be pleased to disallow the said Act, and to take such further action and grant such other relief as to your Excellency in Council may seem meet and just. And your petitioners will ever pray.

The French Canadian Convention of Manitoba, 1890, by

M. A. GIRARD, Sr., *Chairman.*  
GEO. E. FORTIN, *Secretary.*

#### *Memorandum.*

The petition to his Excellency in Council, in connection with the passing of 53 Victoria, chapter 14 (Manitoba), is based upon section 23 of 33 Victoria, chapter 3 (Canada), better known as “The Manitoba Act,” which section 23 reads as follows:—

23. “Either the English or the French language may be used by any person in the debates of the houses of the legislature, and both these languages shall be used in the respective records and journals of those houses; and either of those languages may be used by any person, in any pleading or process, in or issuing from any court of Canada, established under the British North America Act, 1867, or in or from all or any of the courts of the province; the Acts of the legislature shall be printed and published in both those languages.”

But whereas the Manitoba Act has been passed for the purpose of continuing the British North America Act of 1867; and whereas certain portions of the former can only be properly interpreted under the light of a comparison, with corresponding portions of the latter; and whereas the British North America Act, 1867, contains a section practically identical with said section 23 of the Manitoba Act; and whereas the laying down of the general principles upon which confederation now rests was naturally attended with more anxiety, and elicited a more complete and more solemn expression of the intention of parliament, than the passing of subsequent Acts admitting new provinces in the union—it is thought proper for these reasons to first ascertain the exact bearing of the British North America Act, 1867, upon the question of dual languages.

Section 133 of the British North America Act, 1867, is in the following terms:—

133. “Either the English or the French language may be used by any person in the debates of the Houses of Parliament of Canada and of the legislature of Quebec; and both those languages shall be used in the respective records or journals of those houses; and either of those languages may be used by any person in any pleading or process in, or issuing from, any court of Canada established under this Act, and in or from all or any of the courts of Quebec.

"The Acts of the parliament of Canada and of the legislature of Quebec shall be printed and published in both languages."

That the sense which naturally attaches to the above clause and in which it has hitherto always been interpreted, answers strictly to the interpretation which presided to the enacting thereof is fully shown by the Debates on Confederation.

The first declaration on the subject seems to have been provoked by Hon. Mr. Evanturel, who (page 944 Debates on Confederation) said :

"I wish to put a question to the government. I acknowledge that if I confined myself to consulting my own ideas, I should not put this question ; but I do so in order to meet the wishes of several of my friends both within this house and beyond its precincts. Those friends have expressed alarm in relation to one of the clauses of the resolutions, and have requested me to ask an explanation from the Hon. Attorney General for Upper Canada as to the interpretation of that clause. I have therefore to ask him whether article 46 of the resolutions, which states that both the English and French languages may be employed in the general parliament and its proceedings and in the local legislature of Lower Canada, is to be interpreted *as placing the use of the two languages on an equal footing in the Federal parliament*. In stating the apprehensions entertained by certain persons on this subject—and I consider that it is a mark of patriotism on their part and that their apprehensions may be legitimate—I hope the government will not impute to me any hostile intention, and will perceive that the course I adopt is in their interest *as it will give them an opportunity of dissipating the apprehension in question*.

To this, Hon. Attorney General (now Sir) John A. Macdonald, answers as follows :—

"I have very great pleasure in answering the question put to me by my hon. friend for the county of Quebec. I may state that the meaning of one of the resolutions adopted by the conference is this : that the rights of the French Canadian members as to the status of their language in the Federal legislature should be 'precisely the same as they now are in the provincial legislature of Canada, in every possible respect.' I have still further pleasure in stating that the moment this was mentioned in conference, the members of the deputation from the lower provinces unanimously stated that it was right and just, and without one dissentient voice gave their adhesion to the reasonableness of the proposition that the status of the French language as regards '*the procedure in parliament, the printing of measures and everything of that kind*' should be precisely the same as it is in this legislature."

But, however strong these declarations may appear, they do not imply any guarantee as to the future. True, the Union Act which provided at first that the English language should be the sole official language was amended by 11 and 12 Victoria (Imp.) declaring that French also should be an official language ; but there was nothing in this amendment to make its object indefeasible, and the use of the French language, although introduced, was yet as to its continuance, left to the will of the majority."

It was in this sense that the Hon. (now Sir) A. A. Dorion made the following objection :—

"If to-morrow this legislature chooses to vote that no other but the English language should be used in our proceedings, it might do so and thereby forbid the use of the French language. There is therefore no guarantee for the continuance of the use of the language of the majority of the people of Lower Canada but the will and forbearance of the majority of parliament. And as the number of French members in the general legislature under the proposed confederation will be proportionately much smaller than it is in the present legislature, this ought to make hon. members consider what little chance there is for the continued use of their language in the Federal legislature. This is the only observation I have to make on this subject, and it was suggested to me by the answer of the hon. Attorney General."

Hon. (now Sir) John A. Macdonald answered this objection in the following terms :—

"I desire to say that I agree with my honourable friend that as it stands just now, the majority governs ; *but in order to cure this*, it was agreed at the conference



to embody the provision in the Imperial Act. This is proposed by the Canadian government for fear an accident might arise subsequently; and it was assented to by the deputation for each province that the use of the French language should form ‘one of the principles upon which the confederation would be established,’ and that its use as at present should be guaranteed by the Imperial Act.”

The above having more special reference to the status of the two languages in the Federal parliament, Hon. Attorney General (subsequently Sir) George Etienne Cartier, then made definite the interpretation of the same clause as to the use of the minority’s language in the future legislature of Quebec, in these words:—

“I will add, that it was also necessary to protect the English minority in Lower Canada with respect to the use of their language, because in the local parliament of Lower Canada, the majority will be composed of French Canadians. The members of the conference were desirous that it should not be in the power of that majority to decree the abolition of the English language in the local legislature of Lower Canada, ‘any more than it will be in the power of the Federal legislature to do so with respect to the use of the French language.’ I will also add that the use of both languages will be secured in the Imperial Act to be founded on the resolutions.”

Three conclusions must necessarily follow the above premises:—

1. That the English language and the French language were both declared official languages for and in the legislature and the courts of the province of Quebec, as well as in and for the parliament of Canada.

2. That the abolition of either of these languages as official languages, is not within the powers of the legislature of Quebec; or, in the words of Sir George E. Cartier, that “it would not be in the power of the majority to decree the abolition of the English language.”

3. That this privilege of the minority should not receive a narrow interpretation; but rather, as Mr. Evanturel says “as placing the use of the two languages on an equal footing;” or, in the words of Sir John A. Macdonald, as applying “to the procedure in parliament, the printing of measures and everything of that kind.”

Section 133 of the British North America Act, 1867, and section 23 of the Manitoba Act being practically identical, the above three conclusions are also invoked in the present case, upon the ground that the same interpretation should attach to similar enactments.

It may, however, be contended that mere declarations of the intention of the legislature, as the above, cannot stand in the face of positive enactments to the effect contrary; and upon that ground, section 92 of the British North America Act, 1867, has been invoked as empowering provincial legislatures generally to amend their constitution, and the legislature of Quebec particularly to abolish either of its official languages.

True, section 92 of the British North America Act empowers provincial legislatures to amend “the constitution of the province.”

But these last words should be taken as a clear reference to the heading, and the whole of the fifth division of the Act, being “*V. Provincial Constitution*,” upon the grounds of that sound rule of interpretation, that all matters contained in a chapter or division are properly and sufficiently referred to, by quoting the heading or title of such division or chapter.

This seems to be supported by the fact: That in all this division “V” of the British North America Act, 1867, not a single matter nor a single clause is to be found which it is not clearly in the power of provincial legislatures to amend (unless, of course, therein expressly reserved), whilst, on the other hand, leaving out this division “V,” not one single clause is to be found in the Act, which provincial legislatures can claim power to amend (unless of course that power be therein expressly conferred).

It is then submitted as a general conclusion:—

1. That under the British North America Act, 1867, provincial legislatures are empowered to amend only those clauses which are enumerated in, and form part of division “V” of the Act;

2. That as clause 133 (the dual language clause) is not contained in and does not form part of said division "V," it is not within the powers of the legislature of Quebec to repeal nor amend the same. (Dwarris, Maxwell, Hardeastle, Headings, &c.)

It is moreover submitted as applying specially to the present case.

1. That section 92 of the British North America Act, 1867, whilst applying to the provincial legislature of Manitoba, only does so in the restricted sense herein above specified;

2. That section 23 of the Manitoba Act should be read as if it were inserted in the British North America Act, 1867, in the place of, or alongside with, section 133 of the said Act, and subject to the same reservations.

It is moreover submitted that the repealing powers of the legislature of Manitoba in connection with official languages, are restricted, not only by the British North America Act, 1867, as herein above stated, but also by 34-35 Victoria, chapter 28 (Imp.), better known as "The British North America Act, 1871," section 6 of which is in the following terms:—

"Except as provided by the third section of this Act, it shall not be competent for the parliament of Canada to alter the provisions of the last mentioned Act (the Manitoba Act); subject always to the right of the legislature of the province of Manitoba to alter from time to time the provisions of any law respecting *"the qualification of electors and members of the legislative assembly, and to make laws respecting elections in the said province."*

These last words seem to indicate to what extent the legislature of Manitoba has power to amend the Manitoba Act.

*Petition from Members representing the French population in Legislature of Manitoba to His Excellency the Governor General.*

*To His Excellency the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, Governor General and Vice-Admiral of Canada:*

MAY IT PLEASE YOUR EXCELLENCY.

The petition of the members representing the French population in the legislature of Manitoba, humbly sheweth:

1. Whereas the 23rd section of the Manitoba Act (1870), enacts as follows:—"23. Either the English or the French language may be used by any person in the debates of the house of the legislature, and both those languages shall be used in the respective records and journals of those houses; and either of those languages may be used by any person, or in any pleading or process, in or issuing from any court of Canada, established under the British North America Act, 1867, or in or from all or any of the courts of the province. The Acts of the legislature shall be printed in both those languages."

2. Whereas the French population of Manitoba has enjoyed the free exercise of the rights and privileges aforesaid for the space of eighteen years, until the year eighteen hundred and ninety, without hindrance from the various administrations which have governed the province during that period; and

Whereas the Act, chapter 14, of the legislature of Manitoba, passed in the 53rd year of Her Majesty's reign, and sanctioned by the Lieutenant-Governor on the 31st March, 1890, enacts the abolition of the official use of the French language in the debates of the legislative assembly and in the courts of justice; and

Whereas in pursuance of the said chapter 14, neither the records nor the journals of the legislature, nor even the statutes of the said year 1890, have been printed in French, to the detriment of our fellow nationalists and to the prejudice of their constitutional rights solemnly guaranteed both by the parliament of the Dominion and by the Imperial parliament itself;

Wherefore, your petitioners pray your Excellency to graciously use your Excellency's Vice-Regal prerogative, and disallow the Act, chapter 14, of the said statutes of Manitoba.

And your petitioners will ever pray,

THOMAS GELLEY,

M.P.P. for Cartier.

WM. LAGIMODIÈRE,

M.P.P. for La Verandrye.

A. F. MARTIN,

M.P.P. for Morris.

ROGER MARION,

M.P.P. for St. Boniface.

MARTIN JEROME,

M.P.P. for Carillon.

*Petition from Cardinal Archbishop of Quebec, and of Archbishops and Bishops of Roman Catholic Church in Canada.*

*To His Excellency the Governor General in Council:—The Petition of the Cardinal Archbishop of Quebec, and the Archbishops and Bishops of the Roman Catholic Church of the Dominion of Canada, subjects of Her Gracious Majesty the Queen; Respectfully sheweth:*

That, in the third session of the seventh parliament of the province of Manitoba, a statute was enacted, intituled "An Act respecting the Department of Education," and another, intituled "The Public Schools Act," which said enactments deprived the Roman Catholic minority of the said province of the rights and advantages which they formerly enjoyed in the matter of education;

That, in the same session of the same parliament, another statute was enacted, being the Act 53 Victoria, chapter 14, for the purpose of abolishing the official use of the French language in the parliament and the courts of justice of the said province.

That these enactments are opposed to the interests of a considerable portion of the loyal subjects of Her Majesty;

That the said enactments cannot fail to grieve, and do in fact grieve, at least one-half of the devoted subjects of Her Majesty throughout the Dominion of Canada;

That these enactments are contrary to the assurance given in the name of Her Majesty to the people of Manitoba, at the time of the negotiations which led to the entry of that province into confederation;

That the aforementioned enactments are a flagrant violation of the British North America Act, 1867, of the Manitoba Act, 1870, and the British North America Act, 1871;

That your petitioners are justly alarmed at the drawbacks and even dangers which may result from legislation which forces upon those who are its victims, the sad conviction that there is a violation in their case of public good faith; and that advantage is taken of their numerical inferiority to violate the constitution, under the protection of which they think themselves fortunate to live;

Wherefore, your petitioners pray your Excellency in Council to remedy this most deplorable legislation by any means which you may deem most effective and most just.

Wherefore, your petitioners, as in duty bound, will ever pray, &c., &c.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 4th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th March, 1891.

*To His Excellency the Governor General in Council:*

The undersigned having considered the Acts passed by the legislature of the province of Manitoba in the session held in the year 1890, the chapters of which are given



in the annexed schedule, respectfully recommends that they be left to their operation, and that the Lieutenant-Governor of that province be informed thereof.

(Received by the Secretary of State, 11th April, 1890).

(Received by the Secretary of State, chapters 2 and 3, 21st April, 1890.)

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

#### SCHEDULE.

Nos. 1 to 6, 9 to 13, 16 to 19, 21, 22, 24 to 29, 33 to 36, 39 to 48, 50, 52 to 55, 58 to 63, 65 to 70.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 4th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th March, 1891.

*To His Excellency the Governor General in Council :*

The undersigned has had referred to him a petition from the council of the city of Winnipeg, asking that provision may be made for the coming into force of two bills passed by the legislative assembly of the province of Manitoba at its last session.

Cap. 56.—(1) entitled: "An Act respecting Sales of Land for Taxes."

Cap. 57.—(2) the other: "An Act affecting arrears of taxes in the city of Winnipeg," which bills were reserved by his Honour the Lieutenant-Governor, under the provisions of the British North America Act, for the signification of the pleasure of your Excellency.

The undersigned is of opinion that these bills might have been dealt with in the usual manner without having been reserved for your Excellency's assent, and subject to disallowance by your Excellency, and that it is not expedient that any action should be taken by your Excellency in respect to them.

As to the first mentioned, at least, disallowance would have been necessary if it had been assented to, as it is a re-enactment of provisions which had already been disallowed.

He respectfully recommends that the city council of Winnipeg be so informed.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 4th day of April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st March 1891.

*To His Excellency the Governor General in Council :—*

The undersigned has the honour to report upon the following Acts of the legislature of the province of Manitoba, passed in the session of 1890 and received by the honourable the Secretary of State on the 11th of April last, as follows:—

Cap. 7.—"An Act respecting the cancellation and amendment of plans."

Cap. 8.—"An Act to amend the Act respecting the cancellation and amendment of plans, passed during the present session."

Cap. 49.—"An Act to provide special surveys in any city, town or village."

Section 1 of the first of these Acts provides, in effect, that where a plan, or subdivision of a plan, already filed, of a town or village site, or any other division, according to the original government survey, or any portion of land, has been registered under the provisions of any Act, and it is the desire of at least sixty per cent of the owners of the land to annul such subdivision, in whole or in part, and enjoy such lands as if they had never been subdivided, any owner may make application to the county court judge that such plan may be annulled and taken from the registry office, and varied or amended. The subsequent sections provide the machinery for giving effect to the application.

Cap. 8 makes provision for the payment of money into court in certain cases.

Cap. 49 provides for the correcting of supposed errors in respect to existing surveys or plans of sites, towns or villages in the provinces.

The undersigned considers it clear that the legislature of Manitoba cannot legislate in the manner indicated in these Acts, as respects any tract of land including lots not yet patented by the Crown. The surveys in the province of Manitoba were originally made under the provisions of the Dominion Lands Act, and the plans and subdivisions referred to in the Acts now under review, and which may be annulled thereunder, were made under the authority of Dominion legislation. There may be cases of town or village plots, or other divisions, in which the Crown in the right of Canada, has parted with all its interest and, as, in that case, such legislation would not be open to the objection stated, the undersigned does not recommend that the power of disallowance be exercised, but that they be left to their operation.

He recommends, however, that a copy of these observations be referred to the Minister of the Interior, in order that steps may, if necessary, be taken by his department to prevent the Acts referred to being applied to territorial divisions, which include unpatented Crown Lands.

Cap. 14.—An Act to provide that the English language shall be the official language of the province of Manitoba."

This Act provides as follows:—

1. "Any statute or law to the contrary, notwithstanding, the English language, only shall be used in the records and journals of the house of assembly for the province of Manitoba, and in any pleadings or process in or issuing from any court in the province of Manitoba. The Acts of the legislature of the province of Manitoba need only be printed and published in the English language."

2. "This Act shall only apply so far as this legislature has jurisdiction so to enact, and shall come into force on the day it is assented to."

The province of Manitoba received its constitution in the provisions of chapter 3, of 33 Vic., (commonly called "The Manitoba Act,") subsequently confirmed by an Act of the Imperial parliament. Section 23 of that Act is as follows:—

"Either the English or French language may be used by any person in the Debates of the Houses of the legislature, and both those languages shall be used in the respective records and journals of those Houses; and either of those languages may be used by any person, or in any pleading or process, in or issuing from any court of Canada established under the British North America Act, 1867, or in or from all or any of the courts of the province. The Acts of the legislature shall be printed and published in both those languages."

The power of the provincial legislature to amend or repeal this section of the Manitoba Act, so confirmed, admits of great doubt. The validity of the Act under consideration may be very easily tested by legal proceedings on the part of any person in Manitoba, who is disposed to insist on the use of the French language in the pleadings and process of the courts or in the journals and Acts of Assembly. As it is apparent that a large section of the people of the province desire that English alone shall be used in such matters, and that a very considerable section desire the provisions of Manitoba Act upheld in this particular, there can be little doubt that a decision of the legal tribunals will be sought at an early date as to the validity of the present legislation. A judicial determination of that question will be more permanent and satisfactory than a decision of it by the power of disallowance.

The undersigned, therefore, recommends that the Act be left to its operation.

Cap. 15.—“An Act respecting the Executive Administration of Laws of this province.”

This Act is a transcript of an Act passed by the legislature of Ontario in the year, 1889, the constitutionality of which is now being adjudicated upon in an action brought by the undersigned as Attorney General of Canada against the Attorney General of Ontario. As the whole question is before the Courts, he recommends that this Act be left to its operation.

Cap. 20.—“An Act respecting Petty Trespasses.”

Section 1, of this Act is intended to provide penalties against any person who unlawfully enters, or in any way trespasses upon any inclosed land, the property of another person.

This Act bears a close relation to the criminal law, but as it is similar in terms to statutes which have been left to their operation in the older provinces of Canada, and as its constitutionality may be adjudicated upon by judicial methods without inconvenience, he recommends that it be left to its operation.

Cap. 30.—“An Act respecting the Public Health.”

Section 4 provides that:—

“The Lieutenant-Governor in Council may make regulations concerning the entry or departure of boats or vessels at different ports or places in the province, and concerning the medical and sanitary inspection and the landing of passengers or cargoes from such boats or vessels or the receiving of passengers or cargoes on board the same, and also concerning the arrival and departure of passengers and their baggage by railway trains to and from medical and sanitary inspection and the various stations in the province, as may be thought best calculated to preserve the public health.”

Section 2 provides, among other things, for the isolation of a person coming from abroad infected, or having lately been infected, or exposed to infectious diseases.

These two sections appear to the undersigned possibly to infringe somewhat on the exclusive power of the Dominion parliament to legislate as to trade and commerce and as to quarantine. Regulations may, however, be made which would be free from objection on that ground, and be eminently in the public interest.

The undersigned recommends that this Act be left to its operation, and that a copy of this report, if approved, be sent to the Lieutenant-Governor of the province for the consideration of his Executive Council.

Cap. 32.—“An Act for the Protection of Game and Fur-bearing Animals.”

This Act contains many provisions for the purpose indicated in the title.

Section 6 provides, in effect, that no person shall kill any of the animals or birds mentioned in the Act for the purpose of exportation out of Manitoba.

Section 7 provides that no person shall export from the province any of the animals mentioned in the Act, except upon special permit from the provincial Minister of Agriculture.

Section 8 provides that no person, not having a domicile in the province, shall take or kill any of the animals mentioned in the Act, without license from such Minister of Agriculture, and for which license a fee of \$25 shall be payable.

Section 19 provides that the Act shall not apply to Indians within the limits of their reserve with regard to any animals killed for their own use only.

Sections 6 and 7 seem not to be within the authority of the legislature. In establishing a precaution against the destruction of certain animals, they go farther and directly affect trade and commerce. A provincial legislature, in the view of the undersigned, may not legislate as to what goods may or not be exported from or imported into Canada. This is a matter in respect to which the parliament of Canada alone has the right to legislate, and in respect to which it has already legislated. (See R. S. C., cap. 33, section 7).

The undersigned desires to call attention also to the provisions of section 8, above referred to. There is no provision in “The British North America Act,” which specifically gives provincial legislatures the power to legislate in respect to game. Inasmuch as in the original provinces of Canada, all lands therein were either vested in the pro-



vinces, or in persons holding under the provinces, it might be contended that all the wild animals therein were subject to provincial legislation, but as in the province of Manitoba, all the lands were the property of Canada, and the ungranted lands are still the property of Canada, it may be questioned whether the power to legislate in the terms of this Act, and especially in the terms of section 8, is not with the parliament of Canada.

The undersigned would refer to a controversy on this question between the government of Nova Scotia and in the Imperial War Office, (*See ante pages 500, 501, 502*) and he suggests that some arrangement similar to that made by the legislature of Nova Scotia be arrived at, in order that subjects of Her Majesty, not domiciled in the province of Manitoba may, without too onerous conditions, obtain the permissions referred to in the section under review. Notwithstanding the recommendation hereinafter contained, the undersigned considers that the constitutionality of the Act is doubtful and may properly be tested in the courts, and that the government of the province should understand that by allowing the Act to go into operation your Excellency's government does not waive any right which it may possess to give exclusive rights to its licensees, to hunt and shoot upon the public domain of Canada in the province of Manitoba, notwithstanding the provisions of the Act in question. Inasmuch as many of the provisions of the Act are embodied in former statutes of the province, (including those of section 19), which may not be strictly in accordance with the treaties with the Indians in the province of Manitoba, the undersigned cannot recommend the disallowance of the Act. He recommends that it be left to its operation.

Cap. 51. "An Act respecting Municipal Institutions."

This is a consolidation of all previous Acts, affecting municipal corporations in the province of Manitoba. Inasmuch as the Act is simply a consolidation with certain amendments of existing legislation, the undersigned recommends that the Act be left to its operation, notwithstanding that a number of its provisions are *ultra vires*. In this connection he desires, as a matter of precaution, to state that in his view, section 469 does not give the city of Winnipeg, (otherwise than as the Acts of Parliament of Canada may have allowed), authority to construct the work in that section mentioned.

Cap. 64. "An Act respecting The Winnipeg and Duluth Railway Company."

This Act incorporates a railway company to construct a railway from the city of Winnipeg to the International boundary line.

It is doubtful whether this is "a local work or undertaking" within section 92 of "The British North America Act," article 10 (a), but the question is one which may fairly be left to be adjudicated upon, and no public interest seems to demand that the Act be disallowed.

Respectfully submitted.

JOHN S. D. THOMPSON,  
*Minister of Justice.*

*Petition of The Scottish Ontario and Manitoba Land Company to His Excellency the Governor General, re Chapter 23.*

*To the Right Honourable Sir Frederick Arthur Stanley, of Preston, Governor General of Canada:*

The memorial of the Scottish Ontario and Manitoba Land Company (Limited) shows as follows:

1. Your memorialists were incorporated in Great Britain under the Companies' Acts 1862, 1867 and 1877. Some of the objects for which the company were established, are the following:—

(a.) The investment of money in the purchase of real, or heritable or leasehold estate, situated in the Dominion of Canada (including all the provinces and territories thereof) or of any interest therein, or the taking of such estate on lease.

(b.) The leasing, selling or otherwise disposing of such property on instalment or other terms, the borrowing of money upon the security thereof, and the selling or otherwise disposing of any mortgages or other securities, held for the price of any properties sold by the company.

Under the statute of the province of Manitoba, 46 and 47 Vic., chapter 38, your memorialists obtained a license from the Provincial Secretary of Manitoba with the approval of the Lieutenant-Governor in Council, dated 28th July, 1886, authorizing your memorialists to carry on business for the purpose of lending and investing moneys and transacting any loaning business of any description whatever, permitted under the provisions of the said last mentioned statute, within the said province of Manitoba, or for the transaction of any other business of a like nature, including the acquisition and sale of real estate and any other object or purpose to which the legislative authority of Manitoba extends, (except the business of insurance and the building and working of railways) and also giving and granting unto your memorialists full power of purchasing real estate and loaning and investing its moneys in the manner above mentioned to the extent permitted by the said Act or of the charter of incorporation of your memorialists so far as might be within the jurisdiction of the legislature of Manitoba.

In pursuance of the powers conferred upon them, and relying upon the said license, your memorialists have ever since been carrying on business in Manitoba and have purchased and paid for large quantities of land in the province of Manitoba and now hold the same for sale.

Your memorialists further show, that by a statute of the province of Manitoba passed in the present year (53 Vic., chap. 23) entitled "An Act to authorize companies, institutions or corporations incorporated out of this province to transact business therein," it is enacted that no such company, institution or corporation shall hold any lands or any interest therein for a longer period than ten years from the date when such lands or interest therein are acquired, and that any lands, or any interest in lands owned and not disposed of by any such company within said period shall be forfeited to and become vested in the crown for the use of the province of Manitoba.

It is further provided by the said Act that any lands or interest in lands held by any such company at the time of the coming into force of the said Act may be held only for a period of five years from the date the said Act came into force.

If your memorialists and other companies holding lands in Manitoba are required to dispose of the lands held by them within the said time, it will be ruinous to your memorialists, as the large quantity of land forced into the market will depreciate the value thereof, and the very fact that such an Act exists, which may be enforced, is very injurious to such companies.

Your memorialists respectfully submit that the enactment of the said statute is contrary to the rights conferred upon your memorialists by virtue of the license hereinbefore recited.

Your memorialists therefore pray that the statutes last mentioned may be disallowed, in accordance with the powers conferred upon your Excellency.

J. L. SCARTH,  
*Commissioner and Attorney.*

JOHN DOWNEY,  
*Attorney.*

Dated at Toronto the Eighteenth day of March, 1891.

*Memorial from certain Land and Loan Companies to His Excellency the Governor General in Council, re chapter 23.*

*To His Excellency the Governor General in Council:*

MAY IT PLEASE YOUR EXCELLENCY:

The petition of the undersigned respectfully aims to show that the Act of the legislative assembly of the province of Manitoba entitled chapter 23, and cited

as "An Act to authorize Companies, Institutions and Corporations incorporated out of this province to transact business therein," and which Act was assented to by the Lieutenant-Governor, March 31st, 1890, would, if allowed to have effect, be a serious curtailment of rights already possessed by many of the companies concerned. Some of these companies derive their authority to carry on their business under Dominion and others under Imperial powers. All of them sought incorporation on the understanding and in the full assurance that there would be no needless or harassing interference with them in the transaction of their affairs, while the legislative measure which is the subject of this memorial, is manifestly intended to alter and curtail powers conferred by higher authorities, and amongst other evil effects would, if allowed to stand, lead to endless litigation, and thus discourage efforts, which are admitted on all hands to be promotive of the welfare and development of the province of Manitoba. Apart from the objections just cited to this Act the undersigned desire to express their opinion that the Act is so ambiguously worded and drawn, as to make it impossible to come to an agreement in respect to the precise intention and effect of any of its clauses, thus giving reasonable ground to fear that the Act, could only be defined, after a series of judicial decisions, which the undersigned believe to be ever a dangerous process of law creation, and one which meantime, owing to the element of uncertainty, could not fail greatly to retard the development of Manitoba.

On the foregoing grounds, and for many other reasons, not here cited, because not applicable equally to all the companies represented in this memorial, the undersigned respectfully appeal to your Excellency to exercise the power of disallowance vested in you on behalf of the whole Dominion, as a protection against objectionable local legislation.

For the Trust and Loan Company of Canada,

JAMES DIXON, *Deputy Chairman.*

For the Canada North-west Land Company (Limited),

THOMAS SKINNER, *Chairman.*

For the Manitoba Mortgage Investment Company,

EDWARD W. STAFFORD, *Chairman.*

For the Manitoba Land Company (Limited),

JOHN RAE, *Chairman.*

For the Manitoba Real Estate Company (Limited),

ARTHUR FELL, *Managing Director.*

For the Land Corporation of Canada (Limited),

ALEX. MASON, *President.*

For the Hudson's Bay Company,

DONALD A. SMITH, *Governor.*

For the Scottish Ontario and Manitoba Land Company (Limited),

ROBERT YOUNG, *Chairman.*

For the Manitoba Assets Company (Limited),

JAMES MUIRHEAD, *Secretary.*

For the North of Scotland Canadian Mortgage Company (Limited),

JAMES W. BARCLAY, *Chairman.*

For the Canada Settlers' Loan and Trust Company (Limited),

W. GILLESPIE, *Acting Chairman.*

For the Canadian and American Mortgage and Trust Company (Limited),

JOHN GIVEN, *Chairman.*



*Memorial from the Hudson Bay Company to His Excellency the Governor in Council, re chapter 23.*

HUDSON'S BAY HOUSE, LONDON, 13th January, 1891.

By reference to the memorial to his Excellency the Governor General in Council bearing on the Act of the legislative assembly of the province of Manitoba, cap. 23, entitled, "An Act to authorize companies, institutions or corporations incorporated out of this province to do business therein," from the Hudson Bay Company, the North-west Land Company and other corporations holding lands in Manitoba; and in addition to the consideration set forth in that memorial, the Hudson Bay Company would submit.

That the Company of Adventurers of England trading into Hudson Bay, known as the Hudson Bay Company, were incorporated by letters patent in the 22nd year of the reign of King Charles the II., and under that charter the company acquired extensive territories in the north-west part of Canada, over which they were granted governmental and other rights and privileges.

That under the provisions contained in the Rupert's Land Act, 1868, and upon the terms and conditions agreed upon between Her Majesty and the company, and upon the approval of Her Majesty of the terms and conditions upon which Rupert's Land should be admitted into the Dominion of Canada, the company surrendered to Her Majesty, and Her Majesty accepted such surrender, as shown by the order of Her Majesty in Council containing the details of the arrangement and copies of the documents connected therewith, dated the 27th day of June, 1870.

That in the surrender of the territory of Rupert's Land it was a material condition that the Hudson Bay Company should continue to enjoy all the rights and privileges granted by their charter of 1670, with the exception of the governing power in respect of the said territory, and that in lieu of their possessory right they should be permitted to retain one-twentieth of the land set apart for settlement in the district known as the Fertile Belt, and also all the posts and stations they actually occupied, and in addition thereto land adjoining each of their posts to an extent in all of 50,000 acres.

The company further submit that the agreement referred to was made antecedent to the formation of Manitoba and its admission as a province of the Dominion, and that the rights acquired by the company in respect of their property in Manitoba and the North-west Territory are specially protected and guaranteed by the government of Her Majesty and by the Dominion of Canada, and therefore that such rights cannot be, and ought consequently not to be sought to be, affected by provincial legislation.

The Hudson Bay Company, while not assuming that the Act passed by the legislative assembly of Manitoba is intended to affect or interfere with the rights of the company, desire nevertheless, as the Act has given rise to misconception, respectfully to beg the attention of the Dominion government to the possibility of the Act being open to an interpretation which might be set up so as to call in question their secured rights; and to respectfully request the Dominion government would be pleased to take such steps as may appear to them proper to prevent interference by the legislative assembly of Manitoba with those rights.

For the Governor and Company of Adventurers of England trading into Hudson Bay.

DONALD A. SMITH,  
Governor.

*The Solicitor of the Canadian Pacific Railway Company to the Hon. the Secretary of State, re Chapter 23.*

CANADIAN PACIFIC RAILWAY COMPANY,

OFFICE OF THE SOLICITOR, MONTREAL, 16th December, 1890.

SIR,—I have the honour, upon the instructions of the Canadian Pacific Railway Company, to address you with a view of calling the attention of the Governor General in Council to an Act passed by the legislature of the province of Manitoba at its last session, cap. 23, and intituled "An Act to authorize companies, institutions or corporations incorporated out of this province to transact business therein," and to point out certain grounds which, it is submitted, call for its disallowance.

Upon reading the Act, it will be seen that it has no application to companies incorporated under any special or general Act of the legislature of Manitoba, but applies only to those incorporated under the authority of the parliament of Canada, the United Kingdom, or of any state of the United States, or of any state or country in Europe.

Although the wording of the first section is somewhat confused, the classes of such companies to which the Act is intended to apply, appear by that section to be those so incorporated for any of the following purposes, that is to say :

- (a.) Lending or investing moneys.
- (b.) Transacting any loaning business of any description except banking.
- (c.) Transacting any other business of a like nature, including the acquisition and sale of real estate, and other object or purpose to which the legislative authority of Manitoba extends, except the business of insurance, or of building and working railways.

(d.) But it is intended to apply also to railway companies and insurance companies and banks, in so far as they have corporate powers to carry on any of the above mentioned businesses, except banking, insurance or railway building or operating.

The expressed object of the Act is to authorize and enable any company to which it applies, to obtain a license from the Lieutenant-Governor in Council, authorizing it to carry on in the province of Manitoba (as if it were incorporated for these purposes under the authority of the legislature of that province), upon compliance with the provisions of the Act, any of such businesses above referred to (except railway building and operating, insurance and banking) which it has corporate power to carry on.

Sections 2, 3 and 4 provide certain conditions to be complied with before obtaining a license, and that certain results are to follow thereupon with regard to the service of legal process upon the companies.

Section 5 enacts certain specific powers with regard to the taking of mortgages and bonds as security for money lent, and also certain powers as to selling and transferring these securities in the same manner as a private individual might do, provided the company has corporate authority to do such acts.

Section 6 provides that "No such company, institution or corporation shall hold any lands or any interest therein for a longer period than ten years from the date when such lands or interest therein are acquired," and also that "any lands or any interest in lands, owned, and not disposed of by any such company within such period shall become vested in and be forfeited to the Crown for the use of the province of Manitoba," and the same section makes further provision as to the date from which the tenure shall commence to run, in so far as lands mortgaged to the company are concerned, which is immaterial to the present consideration.

Section 7 enacts that the limitation of ten years shall apply to lands held for the company in the name of a trustee.

Section 8 provides that the license may be revoked at any time by the Lieutenant-Governor in Council for violation of any of the provisions of the Act.

Under sections 11 and 12 it is enacted that the Lieutenant-Governor in Council "may restrict such license in any manner which may seem desirable," and that "The fee for such license shall be such sum as may be fixed by the Lieutenant-Governor in Council."

The provisions of sections 9, 10, 13 and 14, it is not necessary now to refer to, except that section 14 makes it necessary for the companies licensed, to send in certain annual returns to the provincial Department of Agriculture.

Section 15 repeals certain acts of the legislature, amongst which it may be material to notice the following:—

(a.) Chapter 38 of 46 and 47 Vic., which was a licensing Act similar to the one under consideration, with the following exceptions: It did not purport to apply to any companies other than such as were incorporated under the laws of the United Kingdom or of the parliament of Canada of the late province of Canada, or of any of the legislatures of any of the provinces of the Dominion other than Manitoba, and the last five lines of section 1 of the Act now under consideration making it applicable to banks, insurance companies and railway companies, were not to be found in chapter 38. So that that Act did not apply to these companies, nor were there any provisions corresponding to sections 7, 8, 10, 11 and 14; and the limit of time that any company to which it applied could hold lands in the province, was five years only.

(b.) Section 3 of chapter 11, 49 Vic., which was also repealed by the Act now under consideration, provided that certain limitations applying to companies incorporated under the Manitoba Joint Stock Companies Incorporation Act (which latter does not apply to insurance or railway companies) with reference to the value of the lands that might be held by any such companies, should be applicable to all companies licensed under said chapter 38.

The other Acts or parts of Acts repealed by section 15 of the one under consideration it is not now necessary to notice.

Although at first sight the Act in question may appear to be only an enabling and permissive act, so that any of the companies to which it applies might obtain a provincial license if they so desire, yet, upon a closer examination of it, and upon a consideration of what was said by the Attorney General of the province in the Legislature when the bill was under discussion, and of the recent action of the Attorney General with reference to a company which had not obtained a license under it, it is submitted that it ought to be construed at least for the present purpose, as prohibitory of any corporation carrying on, without a license, any business, or exercising any powers for which it could obtain one under the Act.

The title of the Act, although not strictly speaking a part of it, may, in cases of ambiguity be considered in order to get if possible some light therefrom as to the object of the legislature in passing the Act, and so far as the title of the one now under consideration is concerned, it certainly would indicate the intention of the legislature to have been, that authority by licenses under the Act must be obtained by the companies to which it applies, before they could exercise in the province any of the powers for which, under the Act, licenses might be obtained.

It would also appear that the almost necessary implication arising from the passing of the Act in question, authorizing the issue of licenses to certain classes of companies named in it, to enable them to exercise certain powers of business in Manitoba on certain conditions, would seem to be that without such licenses these companies could not use these powers in the province.

In this connection, it is important to refer to section 4 of chapter 11, of 49 Vic., passed by the same legislature, which is not repealed, and although inserted in an Act to amend the Manitoba Joint Stock Companies Incorporation Act (which as before stated does not apply to insurance or railway companies) is worded in language of a very general character, the section is as follows: "No company, corporation or other institution, not incorporated under the provisions of the statutes of this province, shall be capable of taking, holding or acquiring any real estate within this province unless under license from the Lieutenant-Governor in Council under any statute of the province in that behalf." That section, left unrepealed, and taken in connection with the



Act under consideration, would indicate still more strongly that the intention of the legislature was to exclude any company, not incorporated under the laws of Manitoba, from carrying on in Manitoba any of the businesses to which this Act applied; unless it obtained a license under the Act.

The reasons given in the legislature for the introduction of the Act under consideration, or rather for that portion of section 1 which is contained in the last five lines of it, also indicate clearly that the intention and view of the government of Manitoba in introducing and passing the bill, as expressed by the Attorney General of the province, was that the effect of it would be to compel all companies who could apply for licenses under it to do so, or that they would be prohibited from carrying on in the province any of the businesses, or exercising any of the powers to which it applied. The report of the debate on that occasion, as reported in the "Winnipeg Free Press," of the next day is as follows:—"The committee of the whole was resumed on the bill to authorize companies, institutions and corporations, incorporated out of the province to transact business therein."

"On motion of the Attorney General, an amendment was made in one of the clauses, so as to include railway companies and banks, along with companies which the bill requires to be licensed to do other than their regular business in the province, that is, to deal in lands. He explained the effect to be that, unless such companies were licensed to hold lands in the province, the Dominion government could not patent their land grants to them. This he claimed would be important for the interests of the province. One of the greatest troubles, municipally speaking, especially in the western part of the province, was that, by connivance of the Dominion government, land companies were able to evade municipal taxation. If the Canada North-west Land Company could not hold lands except under a license from the province, the government could say: 'Yes, we will give you a license, provided you pay taxes like other people.' The government intended, through the agency of the Torrens offices, to bring the matter to a decision. The offices will not recognize any titles vested in the company unless they have a license, if the government could compel the Canada North-west Land Company and even the Canadian Pacific Railway Company to pay taxes, it would be a great benefit to the province. The Dominion government could evade the proposed legislation, if they continued to pursue the policy of fighting against the best interests of this province, but they would have to connive more openly, and patent the lands to the parties to whom the companies sell, instead of taking that position secretly."

The subsequent action of the Attorney General with reference to the Canadian Pacific Railway Company, a company coming under one of the clauses named in the Act, and which has not obtained a license thereunder, indicates, as he had intimated in the legislature, that the intention of the government was, by the passing of this Act, to compel that company at least, to apply for a license, or be prevented from holding or disposing of any lands in Manitoba. Within the last few months, the Attorney General formally notified the Registrars throughout the province, appointed under the Real Property Act of 1889, Manitoba, whose duty it is under that Act to accept and record any transfers in form, according to the Act, from owners of lands, that they were not to recognize, or accept, or register any transfer of lands from the Canadian Pacific Railway Company, because that company had not obtained a license pursuant to the Act under consideration, although it was the duly registered owner, under that very Act, of these lands.

In view of these facts, it is submitted that this Act should, at least for the purpose of considering whether or not it ought to be disallowed, be looked upon and considered as not merely a permissive or enabling Act, but as one having the effect of prohibiting any company incorporated outside of Manitoba, from carrying on there, any of the businesses, or exercising any of the powers to which the Act applied, unless they obtained a license under it.

Assuming the Act, therefore, to be one of this character, it is submitted that it is one which, under the peculiar circumstances, affects prejudicially the interests of the whole Dominion, and which clashes with the legislation of the parliament of Canada, in matters in which the parliament had power to legislate, and for these reasons it ought

to be disallowed, apart from the question as to whether or not it is, as a whole, or as to some of its provisions, *ultra vires* of the provincial legislature, and unconstitutional, and that the Act is one pointed directly against the Canadian Pacific Railway Company, and which, if left to its operation, will result, in so far as that company in particular is concerned, in a violation of one of the conditions upon which the boundaries of the province of Manitoba were extended by the Act, 44 Vic., cap. 14, of the parliament of Canada, all of which will be more fully referred to hereafter.

In support of the first two grounds of objection, the fact that all the public or crown lands in the province of Manitoba, known as Dominion lands, are, and always have been since the creation of the province, part of the "public property of Canada," instead of, as in the case of every other province, being provincial property, places that province in a position peculiar to itself, and gives the Dominion at large, an interest in it and in its legislation, which does not exist with reference to any of the other provinces.

Although, therefore, Acts somewhat similar as far as they go, have been passed by the legislatures of other provinces, and have not been disallowed, the fact just stated makes any local legislation of the province of Manitoba, attempting to limit the right of any corporation to acquire, hold and transfer lands in that province, and as a necessary consequence, the right of the Dominion to sell or to grant, by way of subsidy to these companies, a matter directly affecting Dominion interests, whilst, with reference to the legislation referred to, in the other provinces, no such state of things existed.

The Dominion lands in Manitoba are and always have been looked upon as a valuable Dominion asset, and constitute part of the security to the creditors of Canada for the Dominion indebtedness.

Canada has paid from time to time, and is still paying annually, large subsidies to the province of Manitoba and otherwise for her benefit, and, in order to do so, has incurred large liabilities, and has done so, in great measure, as may be seen on reference to the Subsidy Acts, on account of the fact put forward from time to time by the province, that the public lands in the province all belonged to Canada and not to Manitoba. To these lands and the proceeds thereof when disposed of, as may also in some cases be seen on reference to the Manitoba Subsidy Acts, Canada looked, and from time to time expected, and still expects, to be reimbursed to a great extent for her outlay on behalf of the province.

Any legislation, therefore, such as the Act under consideration, which would put it in the power of the provincial authorities to prevent duly incorporated companies from being able to acquire Dominion lands, and to hold and dispose of them to the best advantage, or to control or restrict them in so doing, would clearly be against the interests of Canada as the owner of the public lands, owing to the fact that such legislation would restrict the freedom Canada should have in disposing of them to the best advantage in the interest of the Dominion, by selling them to or through any such company, or by granting them as subsidies to such companies, in order to obtain the construction of railways or other works of development in the public interest, and would thus also reduce their value, and the likelihood of Canada being recouped to as large a degree as she otherwise would be for her expenditure in respect of Manitoba.

The Dominion is also the holder of security upon the lands of the Canadian Pacific Railway Company in Manitoba in respect of an obligation outstanding connected with the original contract, and as guarantor for that company, and other railway companies of very large liabilities to the bondholders of these companies, and is also the holder of security upon the lands of these companies in Manitoba and elsewhere, and on this account any such legislation as is now being considered, must affect the interests of the Dominion if it operate, as this Act may do, to prevent these companies holding or disposing of their lands except by the permission of the province, and upon such terms as it may dictate, and so render valueless or at least greatly depreciated, one of the most valuable assets of the companies and of the Dominion held from these companies.

In pursuance of a policy adopted by the Dominion parliament for the advantage of Canada, the Canadian Pacific Railway was constructed by the company of that name, in consideration of the payment of a money subsidy, and the grant of a subsidy

in Dominion lands in Manitoba and elsewhere, and for the purpose of enabling the company to utilize these lands as a means of getting money wherewith to build the railway, parliament, as it had the authority to do, fully empowered the company by its Act of incorporation and subsequent Acts, to take, hold and dispose of these lands as it saw fit, and to issue bonds and other securities upon the basis thereof.

Under these powers and for these considerations, the company has acted, and has built said railway and issued large amounts of bonds and other securities, and contracted large liabilities to the public, which are still outstanding, upon the basis of the security of the lands aforesaid, and of the company being entitled to own and dispose of them. Parliament has also, in pursuance of the same policy, incorporated, as it had authority to do, other companies to build railways in Manitoba in consideration of Dominion Land subsidies which it granted to them in Manitoba, and the Territories, and has given them power to acquire, hold and dispose of, and to issue bonds in respect of these lands, as it was necessary they should have to enable them to obtain moneys on which to construct these railways.

These companies have upon the securities of these lands, and the right to acquire, hold and dispose of them as valuable assets, raised large sums of money from the public which are still unpaid, and some of their railways have been constructed, or partially so, and some are not yet built, and it is necessary that the powers conferred upon these companies as above mentioned should be still enjoyed by them, in order that they may realize upon the lands, and have the full benefit of the consideration which parliament agreed to give them, and that they may so redeem their indebtedness.

If, however, the Act now objected to were left to its operation, the powers given by parliament to these companies with reference to their lands might be rendered wholly worthless, or at least be seriously diminished, and thus Canada would be prevented except by the authority of the provincial government, from carrying out its policy with reference to its disposition of the public lands, in granting them to companies to secure the construction of railways or other works for the advantage of the country, whilst at the same time the securities issued by these companies would without doubt be seriously depreciated, and the credit of the Dominion also affected prejudicially, as having authorized the securities to be given, and, as being as above mentioned, in some cases guarantor in respect thereof.

These facts, it is submitted further, show that the Act is one which affects the interests of the whole Dominion, and may operate prejudicially thereto.

It is also submitted that the Act in question is in direct conflict with the legislation of the Dominion parliament incorporating the Canadian Pacific Railway and other railway companies, for the purpose of building railways in or through Manitoba as works for the public advantage of Canada.

These companies are all authorized by their Acts of incorporation to acquire and hold lands for right of way, and other purposes of the railways, and to receive, hold and dispose of grants of lands for right of way and other purposes of the railways, and to receive, hold and dispose of grants of lands by way of subsidies from any government, corporation, or person, and it was requisite that the companies should have such powers, for the purpose of carrying out the objects of their incorporation.

Parliament had, under the constitution, the undoubted right to grant these charters with the powers referred to, and the right also to use and dispose of the Dominion lands in subsidizing these companies in order to get railways built; but the Act of the legislature now under discussion, if left to its operation, would clearly clash with these Acts of parliament, in so far as it would have the effect of making dependent upon the authority of a provincial executive, the right of these companies to acquire, hold and dispose of real estate in Manitoba, as the Acts of parliament enact they shall have the right to do, and also in so far as it would make it necessary for the companies to obtain the provincial license, to acquire and hold even the land necessary for their right of way, without which power their Acts of incorporation would be absolutely valueless and useless.

As regards particularly the Canadian Pacific Railway Company, the Act in question was intended, as appears from the speech and action of the Attorney General of Manitoba, already referred to, to enable the province of Manitoba indirectly to deprive



the company of the benefit of one of the conditions of its contract with the Dominion for the construction of the railway, by forcing it, as a condition of obtaining a license to hold and dispose of real estate, to submit to taxation under the provincial laws, from which, so far as the territory added to the province under the Act of parliament of 1881 is concerned, it is entitled by contract to be exempt.

The original contract between the Dominion and the railway company was ratified by the Act of parliament, 44 Victoria, chapter 1, assented to on the 15th February, 1881, and clause 16 of that contract was as follows:—

“16. The Canadian Pacific Railway Company, and all stations and station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the company, shall be for ever free from taxation by the Dominion, or by any province hereafter to be established, or by any municipal corporation therein, and the lands of the company, in the North-west Territories, until they are either sold or occupied, shall also be free from such taxation for twenty years after the grant thereof from the Crown.”

At that date the boundaries of Manitoba were those fixed by 40 Victoria, chapter 6 of the statutes of Canada, but by an Act of parliament, chapter 14 of 44 Victoria, assented to on the 21st March, 1881, these boundaries were greatly extended, and a large area, which up to that date had been a part of the North-west Territories, and subject to clause 16 of the contract above referred to, was added to Manitoba.

As will, however, be seen from subsection “b” of section 2 of the Act last mentioned, which is in the following words:

“The said increased limit and the territory thereby added to the province of Manitoba shall be subject to all such provisions as may have been, or shall hereafter be enacted, respecting the Canadian Pacific Railway and the lands to be granted in aid thereof,” the added territory was still to continue subject to the clause of the railway contract above referred to, and the province of Manitoba agreed, by an Act of its own legislature, to the extension of its boundaries upon that condition, as appears upon reference to the Dominion and provincial Acts.

If the licensing Act now in question be left to its operation, and if it be of the prohibitory character apparently intended and contended for by the government of the province, it will enable that government to deprive the railway company of a valuable right under its contract with the Dominion, by forcing it, as a condition of obtaining a provincial license, to agree to abandon its right to exemption from taxation as to the said territory added to Manitoba, thus frustrating the policy and intention of the Dominion parliament as to the rights of the company in all territory under the Dominion control at the time of the contract, and amounting in effect to a repudiation of the agreement of the province with Canada, when it consented to take the added territory, subject to all the rights therein of the Canadian Pacific Railway Company.

It may also, in connection with these Acts of parliament of 44 Victoria, be pointed out that, as to the added territory, the province of Manitoba is bound by the provisions of said chapter 14, subsection “b,” to recognize the powers, which had then already been conferred, of the company to hold and dispose of its lands in Manitoba, as said powers are conferred under its charter of incorporation embodied in the Act 44 Victoria, chapter 1, and especially referred to in section 2 of that Act, and that the provincial licensing Act now under consideration, in so far as that territory is concerned, is in this respect in direct conflict with the Acts of parliament, 44 Victoria, chaps. 1 and 14, and is an attempt to repudiate its own contract in agreeing to take the added territory subject to certain conditions.

In view of these facts, which refer more particularly to the effect of the Act upon the Canadian Pacific Railway Company, it is submitted it ought not be left to its operation, and the province be enabled thus to deprive the company, in so far at least as the added territory is concerned, of the powers and valuable concessions which parliament granted to it in the exercise of its constitutional authority in carrying out its policy for the construction of that railway in the public interest of Canada.

It is submitted that the above serious objections to the Act under discussion call for the exercise of the power of disallowance in this case, whether the legislation in

question is or is not *intra vires* of the local legislature, but I also desire briefly to draw attention to certain other grounds of objection to the Act of a more technical character, on account of which it is submitted the Act should be disallowed, and these are as follows :—

1st. That as the Act might, if left to its operation as above explained, have the effect of restricting the Dominion in its right to dispose, as it sees fit in the interests of Canada, of part of the public property consisting of Dominion lands, it would operate as an interference with a subject of legislation over which parliament has express and exclusive authority by virtue of the first enumerated power under section 91 of the British North America Act.

2nd. Assuming for the reasons already stated that the Act is intended to have, and may have, the effect of prohibiting any company to which it applies exercising any of the powers referred to in it, except upon obtaining a license from the provincial authority, it is in that view unconstitutional, for, although it may be successfully contended upon the strength of certain expressions of opinion in the Judicial Committee of the Privy Council in regard to the relative powers of parliament and the local legislatures, that a corporation duly chartered by parliament to do business in more than one province must, in carrying on business in a province, conform to the general local laws affecting its operation, there is no sanction given in any of these cases to the doctrine that such a corporation can be altogether prohibited by a province from doing business therein, unless it gets a license from that province so to do, and such legislation, it is submitted, would be contrary to the provisions of the 91st section of the British North America Act.

3rd. That it is not a general local law for the regulation of, or imposing like conditions and fees upon all companies of the same classes doing business in the province, whether incorporated by provincial or outside authority, but it is legislation specially discriminating against corporations duly incorporated to do business in more than in one province, under said section 91 of the British North America Act, and imposing burdens upon them, to which locally incorporated companies with like powers and privileges are not submitted.

4th. The unlimited and undefined power under sections 11 and 12 given to the Lieutenant-Governor in Council, as to fixing the license fee, and as to the restrictions to be imposed upon the several companies applying for license under the Act, is a serious ground for objection. The Lieutenant-Governor in Council may under these sections discriminate as between different companies applying for licenses as to the fees or restrictions he imposes, or he may impose such fees and restrictions as to all or some companies as may practically prohibit them from obtaining a license or exercising their powers in the province. By this means the interests of the Dominion, as a large property holder in the province, and with a large interest in the carrying out of the construction of railways, to which land subsidies of the Dominion lands in Manitoba have been granted, might be seriously affected, or its policy as to its Manitoba lands wholly thwarted. The Act should, upon its face, disclose in general terms what these conditions and restrictions are to be, and upon what principle the fees are to be imposed, so that they can be considered by the Governor in Council with a view to deciding whether they are imposed or prescribed upon any of the objectionable principles just referred to or not.

5th. The provisions of section 6 that any lands held by a company licensed under the Act for longer than ten years "shall be forfeited to and become vested in the Crown for the use of the province of Manitoba," is one which, so far as lands acquired by such company from the Dominion, that is to say, "Dominion lands," are concerned, it is submitted, should not be allowed to remain in operation. If such lands are to be forfeited, the forfeiture should be for the public uses of Canada.

In conclusion, I have the honour to ask the early consideration by the Governor in Council of the Act in question, and of the matters and statements above submitted, and to request that, in view of the serious prejudicial effect which in many respects the operation of the Act may have upon the interests of the Dominion, and as to the carrying out of its policy with regard to the construction of railways in Manitoba and the

Territories, and the disposal of Dominion lands, as well as upon the interests of the Canadian Pacific Railway and other railways above referred to, and upon the other grounds endeavoured to be put forward above, the Act be disallowed.

As it may possibly be considered as to this application, that the Act may safely be left to be disposed of by the courts, on the question whether it is or is not *intra vires* of the local legislature, I would only say that in regard to many of the more serious objections which, I have urged, they are not matters which could be given effect to by the courts, but can only be acted upon by disallowing the Act, and as the objections taken to the unconstitutionality of the Act, they might not be upheld by the courts, whilst meantime the Act would have taken effect beyond any power of disallowance, and the injurious results now sought to be avoided, would have to be submitted to.

I have, &c.

GEO. M. CLARK,  
*Sol. C.P.R.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st March, 1891.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon "An Act to authorize companies, institutions or corporations incorporated out of this province to transact business therein," passed by the legislature of the province of Manitoba, at its session of 1890, being chapter 23, which Act was received by the Secretary of State on the 11th day of April last.

Section 1 of this Act provides that :—

"Any company, institution or corporation duly incorporated under the laws of Great Britain and Ireland, or of the Dominion of Canada, or of the late province of Canada, or any of the provinces of the Dominion of Canada, or of any state of the United States of America, or of any state or country of Europe, for the purpose of lending or investing money, transacting any loaning business of any description in its corporate name (except the business of banking), or for the transaction of any other business of a like nature, including the acquisition and sale of real estate and other object or purpose to which the legislative authority of Manitoba extends, except the business of insurance, or the building and working of railways, may obtain a license from the Lieutenant-Governor in Council, authorizing it to carry on its business within the province of Manitoba on compliance with the provision of the Act with regard to the issue of such license :"—It further provides that "An insurance or railway company, or a bank incorporated as aforesaid may obtain a license under this section for all the above purposes, but not to carry on the business of insurance, railway building or operating or banking (as the case may be)."

It would appear that this section was intended to supply to all companies incorporated outside of the limits of Manitoba for any of the following purposes, namely :

- (a.) Lending or investing money.
- (b.) Transacting any loaning business of any description except banking.
- (c.) Transacting any other business of a like nature, including the acquisition and sale of real estate or other object or purpose to which the legislative authority of Manitoba extends, except the business of insurance or of building or working railways.
- (d.) It is intended to apply also to railway companies and insurance companies and banks, in so far as they have corporate powers for the purpose named in "a," "b" and "c."

Sections 2, 3, and 4 prescribe conditions to be complied with before the license can be obtained, and make provision with regard to the service of legal process on the companies which may apply for and obtain the license.



Section 5 gives certain powers to licensed companies with regard to the taking of mortgages and bonds as security for the money lent, and as to selling and transferring such securities.

Sections 6 and 7 are as follows:—

6. "No such company, institution or corporation shall hold any lands or any interest therein, for a longer period than ten years from the date when such lands or interest therein, are acquired. Any lands or interests in lands, owned and not disposed of by any such company, within said period, shall be forfeited to, and become vested in the Crown for the use of the province of Manitoba. This section shall only apply to lands upon which any such company, institution or corporation may hold a mortgage, after such mortgage has been foreclosed, or after such land has been offered for sale after the coming into force of this Act, under the power of sale in such mortgage, or after the mortgagor has released to such company, institution or corporation his equity of redemption in such lands, provided that any lands or interest in lands, held by any such company, institution or corporation at the time of the coming into force of this Act may, notwithstanding this Act, be held for a period of five years from the date this Act comes into force. This section shall apply to lands or any interest therein, acquired before or after the coming into force of this Act, except as herein provided.

7. "The next preceding section shall apply to lands or any interest therein held by any such company, institution or corporation in the name of a trustee."

Section 8 provides that the license may be revoked at any time by the Lieutenant-Governor in Council for violation of any of the provisions of the Act.

Under section 11, the Lieutenant-Governor in Council may restrict a license in any manner that may seem desirable; and under section 12, the fee for a license shall be such sum as may be fixed by the Lieutenant-Governor in Council.

Under section 14, licensed companies are required to transmit to the provincial department of agriculture certain annual returns; and section 15 repeals certain Acts having relation to the licensing of companies.

Reviewing this Act, it is necessary to call attention to the Act of Manitoba, chapter 11, 49 Vic., section 4, which is not repealed. The section is as follows: "No company, corporation or other institution, not incorporated under the provisions of the statutes of this province shall be capable of taking, holding or acquiring any real estate within the province unless under license from the Lieutenant-Governor in Council, under any statute of this province in that behalf."

This section, taken in connection with the Act under review, indicates clearly, it is submitted, that the intention of the legislature was, and the probable interpretation of this Act, if it should have any force, would be to prevent any company not incorporated or licensed under the laws of Manitoba from carrying on in Manitoba any business coming under any of the classes before enumerated under (a), (b), (c) and (d), even though power to do so had been conferred by the parliament of the United Kingdom or the parliament of Canada.

Likewise that intention was, and the effect would be, to prevent any company of the classes before enumerated under (a), (b), (c) and (d) from holding real estate within the province, even though expressly authorized to do so, or even though the holding of real estate should be necessary for the objects and business of the company, and that prohibition extends to companies having that power conferred upon them by the parliament of the United Kingdom or the parliament of Canada, legislating within its authority, unless by license from the provincial government, and then only for a limited term of years, and with the result of the lands being forfeited to the province, if that term of years should be passed without the lands being disposed of.

The enactment further purports to be retroactive so as to extend to companies incorporated before its passage, and to lands held by companies before its passage, no matter what the considerations, terms or conditions may have been on which the lands may have been obtained and held by the companies.

On the 16th July 1887, the undersigned in reporting upon an Act of the legislature of the province of Quebec, 49-50 Victoria, chapter 39, intituled "An Act to authorize certain corporations and individuals to loan and invest money in this province"

reported upon some of the legal questions involved in the Act under consideration. That Act was similar in character and purpose to the one now under review, and he only refrained from recommending its disallowance, because it did not contain any negative provisions forbidding companies to do business without obtaining a license from the provincial government, but merely professed to confer power on them to do business after obtaining a license.

The undersigned deems it unnecessary to repeat the argument set out in that report. He is of the opinion that for the reasons therein stated, the Act under review, in so far as it relates to companies having the powers referred to in said Act, by virtue of legislation from the parliament of the United Kingdom or from the parliament of Canada, is *ultra vires* of a provincial legislature, and for that reason and also for the reason hereinafter stated, he recommends that the Act be disallowed.

If the Act under review could be regarded as within the competency of a provincial legislature, there are many very grave reasons why it should not be left to its operation.

1. In Manitoba all the lands were originally the property of Canada, and all ungranted lands there are still the property of Canada. Any legislation prejudicially affecting the value of the public lands in that province, or restricting the opportunities of disposing of them, or altering or diminishing the security of the tenure on which they have been or may be parted with, is legislation directly affecting the property and interests of the people of Canada at large. If the Act in question is valid and should be left to its operation, the government of Canada in dealing with corporations will be confined in its sale or subsidies of public lands to such companies only as the government of Manitoba may choose to license for the purpose. The Act in question would preclude the government of Canada from selling its lands, or giving them on any terms, to any company empowered by its own parliament to take such lands, unless the assent of the provincial government were first obtained. It is against the interests of Canada, as well as against common reason and justice that such legislation should be permitted to have any operation.

2. Ever since the acquisition of Rupert's Land, it has been the policy of the Dominion government, in the interests of the whole of Canada, to encourage the settlement and colonization of all the agricultural lands in Manitoba and the North-west Territories. To attain this end, the government has, in many instances in the past, subsidized railway companies, and other companies, by land grants. Largely upon the faith of such grants, railways and other great public improvements have been built in and through Manitoba and the North-west Territories, thereby opening up for settlement and affording means for the further development of Manitoba and the Territories. It is in the public interest, with a view to further development, that the power of the government of Canada to deal with that portion of the public domain as yet ungranted, should be preserved unimpaired. The legislation in question checks that policy and must seriously impede any future efforts of the government and parliament of Canada in that direction.

3. The provision that lands held by any company for a longer period than ten years from the date when such lands were acquired, shall be forfeited to, and become vested in the Crown, for the use of the province of Manitoba, except that any company now holding lands may hold them for five years from the date of the passing of the Act, would have the effect of confiscation, in respect to all companies, which, before the passing of the Act, acquired lands in Manitoba under competent legislation and by Dominion lands patents, and involves a breach of faith by causing a detrimental change in the terms on which the contracts with those companies were made.

4. A large addition was made by the parliament of Canada to the subsidy of Manitoba, as fixed by its original constitution, by reason of the fact that the public lands were owned by Canada and not by the province. The people of Canada had a right to expect that the disposal of these lands would ensure to the benefit of the whole country, as a compensation for the additional subsidy so provided. The restrictions which Acts of this nature would impose on the disposition of the lands would largely tend to prevent that expectation from being realized. Inasmuch as enormous tracts of

land in the province have been granted by parliament to companies, which would fall under the operation of this Act, the Act would seem to be an attempt on the part of the province to possess itself, in addition to the subsidy mentioned, of a large portion of the lands as well.

5. Section 6 of the Act provides that in case of the forfeiture imposed by the Act, the lands forfeited shall become the property of the province of Manitoba. The undersigned would suggest that if it were proper to impose such forfeiture for any of the causes stated in the Acts, the lands should revert to the original grantor, in this case the Government of Canada.

6. Under authority of existing Dominion statutes, the government of Canada holds a mortgage upon large tracts of land in the province of Manitoba, granted to the Canadian Pacific Railway Company, in respect of an obligation outstanding, connected with the original contract between that company and government of Canada, the government of Canada is likewise the guarantor for the Canadian Pacific Railway Company, and other railway companies, of very large liabilities to their respective bondholders. The lands held by these companies are the security for these guarantees. The Act in question diminishes the value of such securities by shortening the tenure of the lands, compelling a speedy sale, whatever the depreciation thereby caused may be, and by placing the lands in danger of early forfeiture to the province. It seems unnecessary to add that such legislation directly prejudices the interests of the Dominion as a whole.

7. By the terms of the Act, the Executive Council of the province is invested with the absolute right to restrict the license to be granted under it in any manner howsoever, to exact fees for the license to any amount, and to revoke the license when the Council deems that the Act has been violated by the company holding it. Such legislation seems to be without a precedent. The protection of trade and commerce, as well as justice to those associations which have been incorporated by the parliament of Canada and by other competent authority, would seem to require that safeguards and reasonable conditions should be prescribed by the legislature, and that your Excellency's government should have an opportunity of considering their sufficiency, before an Act of this character should be allowed to go into operation.

8. The Act under review has also to be considered with reference to its effect on the Canadian Pacific Railway Company and other railway companies incorporated by the parliament of Canada. Under a policy adopted by that parliament, the Canadian Pacific Railway was constructed in consideration of the payment of a subsidy in money and the grant of a subsidy in Dominion lands in Manitoba and elsewhere, and, for the purpose of enabling the company to utilize these lands as a means of getting money wherewith to build the railway, before they could possibly be sold, parliament fully empowered the company by its Act of incorporation and subsequent Acts, to receive, hold and dispose of these lands as it saw fit, and to issue bonds and other securities thereon. Under these powers the company has acted. It has issued bonds and other securities to a large amount on the security of a mortgage on these lands. Parliament has also, in pursuance of a like policy, incorporated, as it had authority to do, other companies to build railways in and through Manitoba, and these companies have built their railways in consideration of Dominion land subsidies. Parliament has given them power to acquire, hold, and dispose of, and to issue bonds secured on such lands, in order that they might obtain money wherewith to construct the railways. Such companies have, on the securities of these lands and the right to acquire, hold or dispose of them as valuable assets, raised large sums of money which are still unpaid. In other cases, companies under the same circumstances, have their railways partially constructed, in other cases still, the railways are not yet built, and it is necessary that the powers conferred by parliament, as above mentioned, should still be enjoyed by the companies, in order that they may realize on their lands, and have the full benefit of the consideration which parliament agreed to give them, in order that they may carry on the enterprise which they have undertaken. If the Act in question has validity and operation, the lands of all of these companies will be rendered of very much less value than when the respective companies made their engagements with the government, and with their



creditors. The public faith of Canada should not be allowed by your Excellency's government to be impaired by Act of a provincial legislature.

9. The Act in question specially effects the rights of the Canadian Pacific Railway Company in regard to that portion of the province of Manitoba which was added to it under the provisions of 44 Victoria, chapter 14 (Canada). By the original agreement between the government and that company, the government undertook to grant to the company a subsidy of 25,000,000 acres of land, to be selected, as far as possible out of every alternative section, for twenty-five miles, on each side of the line of railway. A portion of the company's land grant was therefore within the territory added in 1881 to the province of Manitoba. The government of the province of Manitoba has contended that under the Act under review, the Canadian Pacific Railway has no power to take, hold, sell or deal with lands in the added territory without taking out a license from the provincial government under this Act. One of the terms of the Dominion Act by which the area of the province was increased provided that the said increased limit, and the territory thereby added to the province should be subject to all such provisions as were then, or should thereafter be enacted, respecting the Canadian Pacific Railway, and the lands to be granted in aid thereof. The assent of the legislature of the province of Manitoba to this extension, and its terms, were given by the Act 44 Victoria (3rd section), chapters 1 and 6, assented to respectively on the 4th March and on 23rd of May, 1881. If the Act now under review operates according to its terms, it would effect a breach of the obligation of the province of Manitoba as contained in the Provincial Acts of 1881, just referred to, as well as of the obligations of the parliament of Canada. The undersigned must add, in this connection, that by a late judgment of the Queen's Bench of Manitoba, delivered on the 11th of February last, the Act was held to be inoperative, as far as the land of the Canadian Pacific Railway Company, within the added provincial territory, is concerned, and was in fact *ultra vires* in respect thereto. No question as to the effect or validity of the Act in the territory originally comprising the province of Manitoba was before the court.

10. The Act also affects in a special manner the rights and the property of the Hudson Bay company. Previous to the acquisition of Rupert's Land by the Canadian government, that company claimed to own, in fee simple, all the lands now comprising the province of Manitoba and the North-west Territories. Upon the Company surrendering its proprietary rights, the government of Canada agreed to grant to it two lots of land in each surveyed township in the fertile belt, as described in the agreement of surrender. This company has claimed the protection of your Excellency's government in the enjoyment of its right, and in the possession of its property so acquired and assured to it. The charter of the province of Manitoba (the Manitoba Act), provided that nothing therein should in any way prejudice or affect the rights or properties of the Hudson Bay Company, as contained in the condition under which that company surrendered Rupert's Land to Her Majesty. In the opinion of the company (an opinion shared by the undersigned), the rights and property of the company would be very materially prejudiced if this Act had effect.

The undersigned might point out other grounds of objection to this legislation, but the reasons above given, as well as those contained in his approved report to your Excellency's predecessor of the 16th day of July, 1887, seem sufficient to justify the recommendation of disallowance which he has made herein.

JNO. S. D. THOMPSON,  
Minister of Justice.

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 11th April, 1891, Vol. XXIV., No. 41, page 1836.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, March 21st, 1891.

*To His Excellency the Governor General in Council :*

Chapter 31. "An Act respecting the diseases of Animals."

The undersigned has the honour to report upon the above named Act which was passed by the legislature of the province of Manitoba at its session of 1890, and which was received by the honourable the Secretary of State on the 11th April last.

The object of the Act is to provide against the introduction of contagious diseases into the province of Manitoba, and for the prevention and cure of the same within the province itself.

Section 14, provides among other things, that :

"It shall be the duty of cattle or farm stock owners, and of every breeder of, or dealer in cattle or other animals, and of every one bringing animals into the province" &c., on perceiving the appearance of infectious or contagious disease among the cattle or other animals owned by him, to give immediate notice in writing to the Department of Agriculture at Winnipeg, and to the veterinarian of the district, and that any person neglecting to give such notice shall be liable to a fine of \$100.

Section 31, imposes certain duties on common carriers, and prescribes certain acts to be done by persons in charge of vessels, boats and other crafts at the close of each of such voyage, and before putting fresh cargo on board, for the purpose of cleansing and disinfecting.

Section 33 relates to the landing of animals from vessels.

Section 35 authorizes the provincial officers at all times to enter upon steamers, vessels and boats in respect to which there is reason to believe that the provisions of the Act or of Orders in Council made thereunder, have not been complied with, and imposes a penalty of \$100 on any person refusing admission to an officer.

Section 37 gives the Lieutenant-Governor in Council power to make such orders as he thinks expedient for regulating or prohibiting the importation into the province, of animals from any country or provinces, or providing for the inspection and quarantining of animals imported into the province from any country or province, and, generally any orders whatsoever which may be thought expedient for the better execution of the Act.

The undersigned has had brought to his notice an Order in Council made under the provisions of this Act on the 17th April, 1890, to the following effect :—

"The Minister of Agriculture and Immigration may from time to time, as to him may seem necessary, appoint from among the district veterinarians of the province, veterinary inspectors, who shall examine all horses brought into Manitoba and who shall have, in respect of such horses, and the cars, boats and other conveyances by which they are brought into Manitoba, all the powers conferred upon district veterinarians by the "Act respecting the diseases of animals," or of any regulations or Orders in Council issued by the Lieutenant-Governor in Council under the provisions of the said Act.

"And it shall be the duty of all persons bringing horses into Manitoba, and of all railway companies and other corporations having such horses in their custody, at once to notify the Department of Agriculture and Immigration at Winnipeg, that such horses are being brought into Manitoba."

It has since been brought to his attention that officers of the Manitoba government, appointed under the provisions of this Act, have compelled persons importing horses into the province to pay a fee of \$1. for examination of each horse so imported, notwithstanding the fact that such animals had previously been examined by a duly appointed officer of the Canadian Department of Agriculture appointed under the provisions of the Act of the parliament of Canada respecting contagious diseases among animals, and after such horses had been proved to be free from contagious diseases, or from any suspicion thereof, and that great injustice had been done by reason of the officers of both the federal and the provincial governments claiming to exercise the same

functions in regard to animals imported into the province. It had therefore become necessary to ascertain the constitutional authority, which has the right to deal with matters of this character.

Under the provisions of "The British North America Act" the regulation of trade and commerce, as well as matters relating to quarantine, come within the exclusive jurisdiction of the parliament of Canada. That parliament has already legislated in respect to both of these matters. Under the "Act respecting Quarantine" chap. 68, R. S. C., and "The Animals Contagious Diseases Act" chap. 69, R. S. C., sufficient regulations have been made, in the opinion of your Excellency's government, to prevent the importation of animals affected by contagious diseases into any province of Canada. Particular attention in this regard has been given to the province of Manitoba, and along the frontier, between that province and the United States, there is an efficient service designed to protect the province of Manitoba against the introduction of contagious diseases. It is not in the public interest that importers of animals into the province of Manitoba should be subject, before being allowed to bring animals into the province, to observe the regulations which are made, not only by your Excellency's government under the authority of the Act of the Canadian parliament above referred to, but also those which have been made by the Manitoba government under the authority of the Act now in review, inasmuch as such an obligation would lead to great confusion and hardship and the useless imposition of fees. Legislation of the character of the Act in question is legislation affecting trade and commerce, a subject with which the provincial Legislature has nothing to do, although it would be quite possible for an Act on the subject, and serving all the useful purposes which could be served by the Act under review, to be so framed, as not to interfere with trade and commerce, or with the Dominion enactment and regulations on the subject of "quarantine and contagious diseases among animals" but so as, on the contrary, to aid in the enforcement of such enactments and legislation, while at the same time providing internal regulations for the province, tending to promote vigilance and caution as regards the introduction and spread of disease. Such an enactment, within the powers of the legislature as regards "Property and Civil Rights" would not impose restrictions on persons entering the province, or importing goods into the province.

The undersigned feels it to be his duty to recommend to your Excellency that this Act be disallowed, and he recommends accordingly.

Respectfully submitted.

JOHN S. D. THOMPSON,  
*Minister of Justice.*

*Order in Council disallowing the Act above named, published in the Canada Gazette on the 11th April, 1891, Vol. XXIV., No. 41, page 1836.*

*Report of the Honourable the Minister of Justice, approved by his Excellency the Governor General in Council on the 4th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, March 21st, 1891.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon the two Acts of the following titles passed by the legislature of the province of Manitoba at its session held in the year 1890, which Acts were received by the Honourable the Secretary of State on the 11th April, 1890:—

Cap. 37: "An Act respecting the Department of Education," and

Cap. 38: "An Act respecting Public Schools."

The first of these Acts creates a Department of Education, consisting of the executive council, or a committee thereof, appointed by the Lieutenant-Governor in Council,



and defines its powers. It also creates an advisory board, partly appointed by the Department of Education and partly elected by teachers, and defines its powers also.

The "Act respecting Public Schools" is a consolidation and amendment of all previous legislation in respect to public schools. It repeals all legislation which created and authorized a system of separate schools for Protestants and Roman Catholics.

By the Acts previously in force either Protestants or Roman Catholics could establish a school in any school district, and Protestant ratepayers were exempted from contribution for the Catholic schools, and Catholic ratepayers were exempted from contribution for Protestant schools.

The two Acts now under review purport to abolish these distinctions as to the schools and these exemptions as to ratepayers, and to establish instead, a system, under which public schools are to be organized in all the school districts, without regard to the religious views of the ratepayers.

The right of the province of Manitoba to legislate on the subject of Education is conferred by the Act which created the province, viz., 32-33 Vic., chap. 3 (The Manitoba Act), sec. 22, which is as follows:—

22. "In and for the province of Manitoba the said legislature may exclusively make laws in relation to education, subject to and according to the following provisions:—

"Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons may have by law or practice in the province at the union."

(2.) "An appeal shall lie to the Governor General in Council from an Act or decision of the legislature of the province, or any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

(3) "In case any such provincial law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council on any appeal under this section, is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and, as far only as the circumstances of each case require, the parliament may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

In the year 1870, when the "Manitoba Act" was passed, there existed no system of education established or authorized by law; but at the first session of the provincial legislature, in 1871, an "Act to establish a system of education in the province" was passed. By the Act the Lieutenant-Governor in Council was empowered to appoint not less than ten nor more than fourteen persons to be a board of education for the province, of whom one-half were to be Protestants and the other half Catholics, with one superintendent of Protestant and one superintendent of Catholic schools. The Board was divided into two sections, Protestant and Catholic, each section to have under its control and management the discipline of the schools of its faith, and to prescribe the books to be used in the schools under its care, which had reference to religion or morals. The moneys appropriated for education by the Legislature were to be divided equally, one moiety thereof to the support of Protestant schools, the other moiety to the support of Catholic schools.

By an Act passed in 1875, the board was increased to 21—12 Protestants and 9 Roman Catholics, the moneys voted by the legislature were to be divided between the Protestants and Catholics in proportion to the number of children of school age in the schools under the care of the Protestant and Catholic sections of the board respectively.

The Act of 1875, also provided that the establishment in a school district of a school of one denomination, should not prevent the establishment of a school of another denomination in the same district.

Several questions have arisen as to the validity and effect of the two statutes now under review; among these are the following:—

It being admitted that "no class of persons," (to use the expression of the Manitoba Act), had, "by law," at the time the province was established, "any right or privilege

with respect to denominational " (or any other) "schools," had "any class of persons" "any such right or privileges with respect to denominational schools by practice" at that time?

Did the existence of separate schools for Roman Catholic children, supported by Roman Catholic voluntary contributions, in which their religion might be taught, and in which text-books suitable for Roman Catholic schools were used, and the non-existence of any system by which Roman Catholics, or any others could be compelled to contribute for the support of schools, constituted a "right or privilege" for Roman Catholics "by practice," within the meaning of the Manitoba Act?

The former of these, as will at once be seen, was a question of fact, and the latter a question of law, based on the assumption which has since been proved to be well founded, that the existence of separate schools at the time of the "union," was the fact on which the Catholic population of Manitoba must rely, as establishing their "right or privilege" "by practice." The remaining question was whether, assuming the foregoing questions, or either of them, to require an affirmative answer, the enactments now under review, or either of them, affected any such "right or privilege."

It became apparent at the outset that these questions required the decision of the judicial tribunals, more especially as an investigation of facts was necessary to their determination. Proceedings were instituted, with a view to obtaining such a decision in the Court of Queen's Bench of Manitoba several months ago, and, in course of these proceedings, the facts have easily been ascertained, and the two latter of the three questions above stated were presented for the judgment of that court with the arguments of counsel for the Roman Catholics of Manitoba on the one side, and of counsel for the provincial government on the other. The court has practically decided, with one dissentient opinion, that the Acts now under review do not "prejudicially affect any right or privilege with respect to denominational schools" which Roman Catholics had by "practice at the time of the union," or, in brief, that the non-existence, at that time, of a system of public schools, and the consequent exemption from taxation for the support of public schools and the consequent freedom to establish and support separate or "denominational" schools, did not constitute a "right or privilege" "by practice" which these Acts took away.

An appeal has been asserted, and the case is now before the Supreme Court of Canada, where it will, in all probability, be heard in the course of next month. If the appeal should be successful, these Acts will be annulled by judicial decision, the Roman Catholic minority in Manitoba will receive protection and redress, the Acts purporting to be repealed will remain in operation, and those whose views have been represented by a majority of the legislature, cannot but recognize that the matter has been disposed of, with due regard to the constitutional rights of the province.

If the legal controversy should result in the decision of the Court of Queen's Bench being sustained, the time will come for your Excellency to consider the petitions which have been presented by, and on behalf of, the Roman Catholics of Manitoba, for redress under sub-sections (2) and (3) of section 22 of the "Manitoba Act," quoted in the early part of this report, and which are analogous to the provisions made by "the British North America Act" in relation to the other provinces.

Those subsections contain in effect the provisions which have been made as to all the provinces, and are obviously those under which the constitution intended that the government of the Dominion should proceed, if it should at any time become necessary that the federal power should be resorted to for the protection of a Protestant or Roman Catholic minority against any Act or decision of the legislature of the province, or of any provincial authority, affecting any "right or privilege" of any such minority "in relation to education."

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

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SUMMARY OF THE CORRESPONDENCE, PETITIONS, ORDERS IN COUNCIL, &C., WITH RESPECT TO  
THE MANITOBA SCHOOL ACTS, 53 VICTORIA, 1890, CHAPTERS 37 AND 38.

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In the session held in the months of January-March, 1890, the legislature of Manitoba passed two Acts intituled as follows: Chap. 37, "An Act respecting the Department of Education;"

And chap. 38, "An Act respecting Public Schools," which were assented to on the 31st March, 1890.

The first one, c. 37, abolished the board of education heretofore existing, and the office of superintendent of education, and creates a department of education which is to consist of the executive council or a committee thereof, appointed by the Lieutenant-Governor in Council, and also an advisory board composed of seven members, four of whom are to be appointed by the department of education, two by the teachers of the province, and one by the university council. Among the duties of the advisory board is the power "to examine and authorize text books and books of reference for the use of the pupils and school libraries; to determine the qualification of teachers and inspectors for high and public schools; to appoint examiners for the purpose of preparing examination papers; to prescribe the form of religious exercises to be used in schools."

The next Act is the Public Schools Act, c. 38. It repeals all former statutes relating to education. It enacts, amongst other things, as follows: Section 3, "All Protestant and Catholic school districts, together with all elections and appointments to office, all agreements, contracts, assessments and rate bills heretofore duly made in relation to Protestant or Catholic schools, and existing when this Act comes into force, shall be subject to the provisions of this Act." Section 4, "the term for which each school trustee holds office at the time this Act takes effect shall continue as if such term had been created by virtue of an election under this Act." Section 5, "All public schools shall be free schools, and every person in rural municipalities between the age of five and sixteen years, and in cities, towns and villages between the age of six and sixteen shall have the right to attend some school." Section 6, "Religious exercises in public schools shall be conducted according to the regulations of the advisory board. The time for such religious exercises shall be just before the closing hour in the afternoon. In case the parent or guardian of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place." Section 7, "Religious exercises shall be held in a public school entirely at the option of the school trustees for the district, and upon receiving written authority from the trustees, it shall be the duty of the teacher to hold such religious exercises." Section 8, "The public schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided."

It provides for the formation, alteration and union of school districts in rural municipalities and in cities, towns and villages, the election of school trustees and for levying a rate on the taxable property in each school district for school purposes.

Section 92 enacts that "the municipal council of every city, town and village shall levy and collect upon the taxable property within the municipality in the manner provided in this Act and in the Municipal and Assessment Acts, such sums as may be required by the public school trustees for school purposes."

Section 108, which provides for the legislative grant to schools, has the following sub-section: "(3) Any school not conducted according to all the provisions of this or any Act in force for the time being, or the regulations of the department of education, or the advisory board, shall not be deemed a public school within the meaning of the law, and shall not participate in the legislative grant." By section 143, "No teacher shall use or permit to be used as text books, any books in a model or public school, except such as are authorized by the advisory board, and no portion of the legislative grant shall be paid to any school in which unauthorized books are used." By section 179, "In cases where, before the coming into force of this Act, Catholic school districts have been established as in the next preceding section mentioned (that is, covering the same territory as any Protestant district), such Catholic school district shall, upon the



coming into force of this Act, cease to exist, and all the assets of such Catholic school district shall belong to, and all the liabilities thereof be paid by the public school district."

#### BARRETT vs. CITY OF WINNIPEG.

In the month of November, 1890, proceedings were taken, in order to test the validity of the statutes just mentioned. These proceedings were by way of an application made by Dr. J. K. Barrett, of Winnipeg (who was a Catholic ratepayer), to quash by-laws Nos. 480 and 483 of the city of Winnipeg, which had been passed under authority of the statutes before mentioned. The application was made before Mr. Justice Killam, who dismissed the application, holding that the Acts in question were valid. (*See Manitoba reports, vol. vii., p. 275.*) From this judgment an appeal was taken to the court of Queen's Bench for Manitoba. Judgment was given on the 2nd February, 1891, dismissing the appeal. Chief Justice Taylor and Mr. Justice Bain holding that the legislation was *intra vires* of the legislation. From this judgment Mr. Justice Dubuc dissented, he being of opinion that it was *ultra vires*. (*See Manitoba Report, vol. vii., p. 304.*)

The appeal was carried to the Supreme Court of Canada, who gave judgment in October, 1891, unanimously holding that the Acts were *ultra vires*. (*See Supreme Court Reports, vol. xix, p. 374.*)

The matter now came before the Judicial Committee of the Privy Council on the 30th July, 1892. Judgment was given, which decided that the legislation was valid, thus reversing the judgment of the Supreme Court. (*See L. R. App. cases, 1892, p. 445.*)

#### LOGAN vs. THE CITY OF WINNIPEG.

In December, 1891, similar proceedings to those in the case of Barrett vs. the City of Winnipeg, were instituted by Mr. Alex. Logan (an Episcopalian). Judgment was given in December 1891, and following the decision of the Supreme Court, held that the acts in question were invalid. (*See Manitoba Reports, vol. viii, p. 3.*)

This judgment was reversed by the Judicial Committee of the Privy Council on the 30th of July, 1892. (*See L. R. App. cases, 1892, p. 445.*)

The following petitions, &c., were presented to his Excellency the Governor General in Council in respect to the said Acts.

#### I. FROM MEMBERS OF THE ROMAN CATHOLIC CHURCH IN MANITOBA.

*To His Excellency the Governor General in Council :*

The humble petition of the undersigned, members of the Roman Catholic Church, in the province of Manitoba, and dutiful subjects of Her most Gracious Majesty, doth hereby respectfully represent that :—

The seventh legislature of the province of Manitoba, in its third session assembled, did pass, in the year eighteen hundred and ninety, an Act intituled "An Act respecting the Department of Education," and also "An Act respecting Public Schools," which deprive the Roman Catholic minority in the said province of Manitoba of the rights and privileges they enjoyed with regard to education, previous to and at the time of the union, and since that time up to the passing of the Acts aforesaid.

That, subsequent to the passing of said Acts, and on behalf of the members of said Roman Catholic Church, the following petition has been laid before your Excellency in Council :—

*To His Excellency the Governor General in Council :*

The humble petition of the undersigned members of the Roman Catholic Church, in the province of Manitoba, presented on behalf of themselves and their co-religionists in the said province, sheweth as follows :—

1. Prior to the passage of the Act of the Dominion of Canada, passed in the thirty-third year of the reign of Her Majesty Queen Victoria, chapter three, known as the Manitoba Act, and prior to the Order in Council issued in pursuance thereof, there existed, in the territory now constituting the province of Manitoba, a number of effective schools for children.

2. These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic Church, and others by various Protestant denominations.

3. The means necessary for the support of the Roman Catholic schools were supplied to some extent by school fees paid by some of the parents of the children, who attended the schools, and the rest was paid out of the funds of the church contributed by its members.

4. During the period referred to, Roman Catholics had no interest in or control over the schools of the Protestant denominations, and the Protestant denominations had no interest in or control over the schools of the Roman Catholics. There were no public schools in the sense of state schools. The members of the Roman Catholic Church supported the schools of their own church for the benefit of the Roman Catholic children, and were not under obligation to, and did not, contribute to the support of any other schools.

5. In the matter of education, therefore, during the period referred to, Roman Catholics were, as a matter of custom and practice separate, from the rest of the community.

6. Under the provisions of the Manitoba Act, it was provided that the legislative assembly of the province should have the exclusive right to make laws in regard to education, subject to the following provisions:—

(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

(2.) An appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province, or of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

(3.) In case any such provincial law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council, or any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General under this section.

7. During the first session of the legislative assembly of the province of Manitoba, an Act was passed relating to education, the effect of which was to continue to the Roman Catholics that separate condition with reference to education, which they had enjoyed previous to the erection of the province.

8. The effect of the statute, so far as the Roman Catholics were concerned, was merely to organize the efforts which the Roman Catholics had previously voluntarily made for the education of their own children. It provided for the continuance of schools under the sole control and management of Roman Catholics, and of the education of their children, according to the methods by which alone they believe children should be instructed.

9. Ever since the said legislation, and until the last session of the legislative assembly, no attempt was made to encroach upon the rights of the Roman Catholics so confirmed to them as above mentioned, but during said session, statutes were passed (53 Vic., chaps. 37 and 38) the effect of which was to deprive the Roman Catholics altogether of their separate condition in regard to education; to merge their schools with those of the Protestant denominations; and to require all members of the community, whether Roman Catholic or Protestant, to contribute, through taxation, to the support

of what are therein called public schools, but which are in reality, a continuation of the Protestant schools.

10. There is a provision in the said Act for the appointment and election of an advisory board, and also for the election in each municipality of school trustees. There is also a provision that the said advisory board may prescribe religious exercises for use in schools, and that the said school trustees may, if they think fit, direct such religious exercises to be adopted in the schools in their respective districts. No further or other provision is made with reference to religious exercises, and there is none with reference to religious training.

11. Roman Catholics regard such schools as unfit for the purposes of education, and the children of Roman Catholic parents cannot and will not attend any such schools. Rather than countenance such schools, Roman Catholics will revert to the voluntary system in operation previous to the Manitoba Act, and will, at their own private expense, establish, support and maintain schools in accordance with their principles and their faith, although by so doing they will have in addition thereto to contribute to the expense of the so-called public schools.

12. Your petitioners submit that the said Act of the legislative assembly of Manitoba, is subversive of the rights of Roman Catholics guaranteed and confirmed to them by the statute erecting the province of Manitoba, and prejudicially affects the rights and privileges with respect to Roman Catholic schools which Roman Catholics had in the province at the time of its union with the Dominion of Canada.

13. The Roman Catholics are in minority in said province.

14. The Roman Catholics of the province of Manitoba therefore appeal from the said Act of the legislative assembly of Manitoba.

Your petitioners therefore pray,—

1. That your Excellency the Governor General in Council may entertain the said appeal, and may consider the same, and may make such provisions and give such directions for the hearing and consideration of the said appeal as may be thought proper.

2. That it may be declared that such provincial law does prejudicially affect the rights and privileges with regard to denominational schools which Roman Catholics had by law or practice in the province at the union.

3. That such directions may be given and provisions made for the relief of the Roman Catholics of the province of Manitoba as to Your Excellency in Council may seem fit.

And your petitioners will ever pray.

†ALEX., Arch. of St. Boniface.

HENRI F., Ev. d'Anemour.

JOSEPH MESSIER, P.P. of St. Boniface.

T. A. BERNIER.

J. DUBUC.

L. A. PRUD'HOMME.

M. A. GIRARD.

A. A. LARIVIERE, M.P.

JAMES E. PRENDERGAST, M.P.P.

ROGER MARION, M.P.P., and 4,257 more names.

II. MEMORANDUM DATED MARCH 28TH, 1890, FROM J. E. PRENDERGAST, M.P.P., ON BEHALF OF HIMSELF AND THE MEMBERS FOR CARILLON, CARTIER, LE VERANDRY, MORRIS AND ST. BONIFACE, SUBMITTING THAT THE SAID ACTS ARE *ultra vires*, FOR REASONS MORE FULLY SET OUT IN THE FOLLOWING MEMORANDUM.

Memorandum respecting a bill intituled "An Act respecting the Department of Education" and a bill intituled: "An Act respecting Public Schools."

It is respectfully submitted that the bills above mentioned are and constitute a gross and direct violation of the rights and privileges guaranteed to the Roman Catholic minority of Her Majesty's subjects in the province of Manitoba, by section 93 of "The British North America Act, 1867," and section 22 of "The Manitoba Act."

It is submitted that the first sub-clause of said section 22 of "The Manitoba Act" recognizes the law or practice followed prior to the union, as a source of indefeasible rights and privileges with respect to denominational schools.



By the practice followed, the Roman Catholic denomination, and in fact all the religious denominations known in the country then enjoyed the following privileges:—

1. They each had their denominational schools, there being in fact then, no other schools than denominational schools in the country.

2. Each denomination (whether by their clergy, laymen or otherwise) had the privilege of determining the curriculum of the course of studies to be followed in their respective schools, so that the convictions and consciences of the parents were not violated in their children.

3. The practice, the general practice, was that each denomination supported its own schools.

The above practice is perfectly supported and illustrated by letters from the respective boards of the Roman Catholic, Episcopalian and Presbyterian denominations, as reproduced in Mr. H. T. Hind's report of the Red River Expedition, in the chapter concerning education.

Whilst recognizing the supreme right of the legislative assembly of voting aids and subsidies, it is further submitted that, prior to union, the only moneys spent for public purposes, and which could in any sense be considered as public moneys, were those of the honourable the Hudson Bay Company, and that it was the practice for said company to grant yearly certain sums to the three denominations named for their mission work, a most important part of which was their educational work.

It is respectfully submitted that the said bill respecting the department of education is, considered in its whole and more particularly by sections, determining the powers of and creating the department of education and the advisory board, in violation of the rights and privileges above mentioned; and so for the said bill respecting public schools, particularly by sections six, seven or eight, and by chapters headed "compulsory education," and "penalties and prohibitions" and "school assessment."

It is further respectfully submitted that by sub-clause 3 of clause 93 of "The British North America Act, 1867," and by sub-clause 2 of clause 22 of "The Manitoba Act," all Acts passed after the union authorizing separate or denominational schools, are also recognized as a source of indefeasable rights and privileges.

That the said bills passed during the present session are also in this respect in violation of such rights and privileges, is evident from the fact that the said bills expressly upset "The Manitoba School Act" now in force, and the denominational schools established thereunder, and substitute in lieu of the latter non-sectarian public common schools.

All of which is most respectfully submitted.

JAMES E. P. PRENDERGAST,  
*M.P.P. for Woodlands.*

### III. PETITION FROM CATHOLIC SECTION OF THE MANITOBA BOARD OF EDUCATION, PRAYING FOR DISALLOWANCE OF THE ACTS, CHAPTERS 37 AND 38.

*To His Excellency the Governor General in Council :*

The petition of the Catholic section of the board of education in and for the province of Manitoba doth hereby most respectfully represent : That

Whereas previous to, and at the time of the union, there existed by practice, in the territory which now forms the province of Manitoba, a system of denominational schools ;

Whereas the maintenance of such system was made a condition of the union by clause 7 of the bill of rights, upon which such union was negotiated ;

Whereas thereafter the legislature of the province of Manitoba has established a system of denominational schools, which has been in existence since the union up to this year, without being questioned or complained of.

Whereas the existence of such a system of denominational schools by practice previous to, and at the time of the union, and by law since the union, has created rights and privileges in matter of education to Catholic and Protestant denominations alike ;

Whereas apart of the protection afforded to all by clause 93 of the British North America Act, 1867, it has been enacted by clause 22 of the Manitoba Act, that

22. In and for the province, the said legislature may exclusively make laws in relation to education, subject and according to the following provisions :—

(1.) Nothing in any such law shall prejudicially effect any right or privilege, with respect to denominational schools, which any class of persons have by law or practice in the province at the union.

(2.) An appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

Whereas, two bills respectively intituled "An Act respecting the Department of Education," and "An Act respecting Public Schools," have been adopted by the legislature of the province of Manitoba at the session, closed on the 31st day of March, A.D. 1890, and, whereas, such legislation has prejudicially affected the rights and privileges of the Catholic minority of this province with respect to Catholic schools, inasmuch as by the said Act the said Catholic schools of this province are wiped out ;

The Catholic section of the board of education in and for the province of Manitoba most respectfully and earnestly pray his Excellency the Governor General in Council that said last mentioned Acts be disallowed to all intents and purposes.

And your petitioners will ever pray.

† ALEX., ARCH. OF ST. BONIFACE, *O. M. I.*,  
*President of the Catholic section of the Board of Education.*

T. A. BERNIER,  
*Superintendent of Education for the Catholic Section.*

WINNIPEG, 7th of April, 1890.

IV. PETITION FROM HIS GRACE THE ARCHBISHOP OF ST. BONIFACE, TO HIS EXCELLENCY THE GOVERNOR GENERAL.

To the Right Honourable Sir FREDERICK ARTHUR STANLEY, Baron Stanley of Preston, Governor General of Canada and Vice-Admiral of the same.

*May it please Your Excellency :*

To allow the undersigned, Roman Catholic archbishop of Manitoba, to lay respectfully before your excellency the following observations and requests :

Previous to the transfer of the North-west Territories to the Dominion of Canada, there prevailed a great uneasiness amongst the inhabitants of the said territories, with regard to the consequences of the transfer. The Catholic population especially, mostly of French origin, thought they had reason to foresee grievances on account of their language and their religion, if there were no special guarantee given as to what they considered their rights and privileges. Their apprehensions gave rise to such an excitement that they resorted to arms ; not through a want of loyalty to the Crown, but only through mere distrust towards Canadian authorities, which were considered as trespassing in the country, previous to their acquisition of the same. Misguided men joined together to prevent the entry of the would-be Lieutenant-Governor.

The news of such an outburst was received with surprise and regret, both in England and Canada. All this took place in the autumn of 1870.

I was in Rome at the time, and at the request of the Canadian authorities I left the Ecumenical Council to come and help in the pacification of the country. On my way home, I spent a few days in Ottawa. I had the honour of several interviews with Sir John Young, then Governor General, and with his ministers. I was repeatedly assured that the rights of the people of Red River would be fully guarded under the

new régime ; that both imperial and federal authorities would never permit the new comers in the country to encroach on the liberties of the old settlers ; that on the banks of the Red River, as well as on the banks of the St. Lawrence, the people would be at liberty to use their mother tongue, to practise their religion, and to have their children brought up according to their views.

On the day of my departure from Ottawa, his Excellency handed me a letter, a copy of which I attach to this as Appendix A, and in which are repeated some of the assurances given verbally. "The people," says the letter, "may rely that respect and attention will be extended to the different religious persuasions."

The Governor General, after mentioning the desire of Lord Granville "to avail of my assistance from the outset," gave me a telegram he had received from the most honourable the Secretary of the Colonies, which I attach to this as Appendix B, and in which his lordship expressed the desire that the Governor General would take "every care to explain where there is a misunderstanding, and to ascertain the wants, and conciliate the good will of all the settlers of the Red River."

I was, moreover, furnished with a copy of the proclamation issued by His Excellency on the 6th December, 1869, which I attach to this as appendix C. In this proclamation we read: "Her Majesty commands me to state to you that she will be always ready, through me as her representative, to redress all well-founded grievances, and any complaints that may be made, or desires that may be expressed to me as Governor General.

"By Her Majesty's authority I do therefore assure you that on your union with Canada, all your civil and religious rights and privileges will be respected."

A delegation from Red River had been proposed as a good means of giving and receiving explanations conducive to the pacification of the country. The desirability of this step was urged upon me as of the greatest importance, and the premier of Canada, in a letter I attach to this Appendix D, wrote to me: "In case a delegation is appointed to proceed to Ottawa, you can assure them that they will be kindly received and their suggestions fully considered. Their expenses coming here and returning and while staying in Ottawa will be defrayed by us."

I left after having received the above-mentioned instructions and reached St. Boniface on the 9th of March, 1870.

I communicated to the dissatisfied the assurances I had received, showing them the documents above cited. This largely contributed to dispel fears and to restore confidence. The delegation which had been delayed was definitely decided upon. The delegates appointed several weeks before, received their commission afresh. They proceeded to Ottawa ; opened negotiations with the federal authorities, and with such result that on the 3rd of May, 1870, Sir John Young telegraphed to Lord Granville: "Negotiations with delegates closed satisfactorily."

The negotiations provided that the denominational or separate schools would be guaranteed to the minority of the new province of Manitoba. The French language received such recognition that it was decided it would be used officially both in Parliament and in the courts of Manitoba.

The Manitoba Act was then passed by the House of Commons and Senate of Canada and sanctioned by the Governor General.

The said Act received the supreme sanction of the Imperial Parliament, which thus took under its own safeguard the rights and privileges conferred by it.

I take the liberty to here cite most of the two clauses relating to denominational schools and official use of the French language.

Clause 22. "In and for the province, the said legislature may exclusively make laws in relation to education, subject and according to the following:

"(1.) Nothing in such law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law or practice in the province at the union.

"(2.) An appeal shall lie to Governor General in Council from any Act or decision of the legislature of the province, or any other provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education."



Clause 23. "Either the English or the French language may be used by any person in the debates of the Houses of the legislature, and both those languages shall be used in the respective records and journals of those Houses, and either of these languages may be used by any person, or in any pleading or process in or issuing from any court of Canada established under the British North America Act, 1867, or in or from all or any of the courts of the province. The Acts of the legislature shall be printed and published in both these languages."

According to the provisions above mentioned, the legislature of Manitoba always recognized the Catholic schools as an integral part of the educational system of the province. The use of the French language met with the same recognition. Everything went on smoothly and harmoniously in that respect since the establishment of the province, until a few months ago.

Without stating any fair reason for the change, and without any public movement to determine it, the provincial cabinet of Mr. Greenway has brought before the legislature and secured the passing of Acts of such a radical character against the French and the Catholics, that a decided Protestant influential newspaper has not hesitated to say; "That is not legislation, but persecution."

I know that the laws I allude to are to be remitted to your Excellency along with this, so I do not add a copy of the same.

I consider the laws just enacted by the legislature of Manitoba, to abolish the Catholic schools and the official use of the French language, as an unwarranted violation of the promises made before, and to secure the entry of this country into confederation.

I consider such laws as a death blow to the very constitution of this province. They are detrimental to some of the dearest interests of a portion of Her Majesty's most loyal subjects. If allowed to be put in force, they will be a cause of irritation, destroy the harmony which exists in the country, and leave the people under the painful and dangerous impression that they have been cruelly deceived, and because a minority, they are left without protection, and that against the promise made 20 years ago by the then immediate representative of Her Majesty: "Right shall be done in all cases."

I, therefore, most respectfully and most earnestly pray that your Excellency, as the representative of our most beloved Queen, should take such steps that in your wisdom would seem the best remedy against the evils that the above mentioned and recently enacted laws are preparing in this part of Her Majesty's domain.

With most profound respect and full confidence.

I remain, etc.,

†ALEX., *Arch. of St. Boniface, O.M.I.*

ST. BONIFACE, 12th April, 1890.

## A

*Letter to Bishop Taché, from Sir John Young.*

OTTAWA, 16th February, 1870.

MY DEAR LORD BISHOP,—I am anxious to express to you, before you set out, the deep sense of obligation which I feel is due to you for giving up your residence at Rome, leaving the great and interesting affairs in which you were engaged there, and undertaking at this inclement season, the long voyage across the Atlantic and long journey across the continent, for the purpose of rendering service to Her Majesty's Government, and engaging in a mission in the cause of peace and civilization.

Lord Granville was anxious to avail of your valuable assistance from the outset, and I am heartily glad that you have proved willing to afford it so promptly and generously.

You are fully in possession of the views of my government, and the Imperial Government, as I informed you, is earnest in the desire to see the North-west Territory united to the Dominion on equitable conditions.

I need not attempt to furnish you with any instructions for your guidance beyond those contained in the telegraphic message sent by Lord Granville on the part of the British cabinet, in the proclamation which I drew up in accordance with that message, and in the letters which I addressed to Governor McTavish, your vicar-general, and Mr. Smith.

In this last note, "all who have complaints to make" or wishes to express, are called upon to address themselves to me, as Her Majesty's representative, and you may state with the utmost confidence that the Imperial Government has no intention of acting otherwise than in perfect good faith towards the inhabitants of the North-west. The people may rely that respect and attention will be extended to the different religious persuasions; that title to every description of property will be carefully guarded, and that all the franchises which have subsisted, or which the people may prove themselves qualified to exercise, shall be duly continued and liberally conferred.

In declaring the desire and determination of Her Majesty's cabinet, you may safely use the terms of the ancient for formula, "Right shall be done in all cases."

I wish you, dear lord bishop, a safe journey and success in your benevolent mission.

Believe me, with all respect, faithfully yours,

JOHN YOUNG.

## B

*Telegram sent by Lord Granville to Sir John Young, dated the 25th November, 1869.*

The Queen has learned with regret and surprise that certain misguided men have joined together to resist the entry of her Lieutenant-Governor into Her Majesty's possessions in the Red River.

The Queen does not distrust her subjects' loyalty in those settlements, and must ascribe their opposition to a change, plainly for their advantage, to misrepresentations or misunderstanding. She relies upon your government for taking every care to explain where there is a misunderstanding, and to ascertain the wants and conciliate the good will of all the settlers of the Red River. But at the same time she authorizes you to tell them that she views with displeasure and sorrow their lawless and unreasonable proceedings, and she expects that if they have any wish to express or complaints to make they will address themselves to the Governor of the Dominion of Canada, of which in a few days they will form a part.

The Queen relies upon her representative being always ready on the one hand to give redress to well-founded grievances, and on the other to repress with the authority with which she has entrusted him any unlawful disturbance.

## C.

### PROCLAMATION, (V.R.)

By His Excellency the Right Honourable Sir John Young, Baronet, a member Her Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Honourable Order of the Bath, Knight of the Most Distinguished Order of St. Michael and St. George, Governor General of Canada.

To all and every the loyal subjects of Her Majesty the Queen, and to all to whom these presents shall come,—

(GREETING :

The Queen has charged me, as her representative, to inform you that certain misguided persons in her settlements on the Red River have banded themselves together to oppose by force the entry into Her North-western Territories of the officer

selected to administer, in her name, the government, when the territories are united to the Dominion of Canada, under the authority of the late Act of the Parliament of the United Kingdom; and that those parties have also forcibly, and with violence, prevented others of her loyal subjects from ingress into the country.

Her Majesty feels assured that she may rely upon the loyalty of her subjects in the North-west, and believes those men who have thus illegally joined together, have done so from some misrepresentation.

The Queen is convinced that in sanctioning the union of the North-west Territories with Canada, she is promoting the best interests of the residents, and at the same time strengthening and consolidating Her North American possessions as part of the British Empire. You may judge, then, of the sorrow and displeasure with which the Queen views the unreasonable and lawless proceedings which have occurred.

Her Majesty commands me to state to you, that she will always be ready through me, as her representative, to redress all well-founded grievances, and any complaints that may be made, or desires that may be expressed to me as governor general. At the same time she has charged me to exercise all powers and authority with which she has invested me in the support of order, and the suppression of unlawful disturbances.

By Her Majesty's authority, I do therefore assure you that on the union with Canada, all your civil and religious rights and privileges will be respected, your properties secured to you, and that your country will be governed, as in the past, under British laws, and in the spirit of British justice.

I do further, under her authority, entreat and command those of you who are still assembled and banded together, in defiance of law, peaceably to disperse and return to your homes, under the penalties of the law in case of disobedience.

And, I do lastly inform you, that in case of your immediate and peaceable obedience and dispersion, I shall order that no legal proceedings be taken against any parties implicated in these unfortunate breaches of the law.

Given under my hand and seal at arms at Ottawa, this sixth day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and in the thirty-second year of Her Majesty's reign.

By command,

JOHN YOUNG.

H. L. LANGEVIN, Secretary of State.

D.

(*Private.*)

DEPARTMENT OF JUSTICE, OTTAWA, 16th February, 1870.

MY DEAR LORD,—Before you leave Ottawa on your mission of peace, I think it well to reduce to writing the substance of a conversation I had the honour to have with you this morning.

I mark this letter private in order that it may not be made a public document, to be called for by parliament prematurely; but you are quite at liberty to use it in such a manner as you may think most advantageous.

I hope that ere you arrive at Fort Garry, the insurgents, after the explanations that have been entered into by Messrs. Thibault, DeSalaberry and Smith, will have laid down their arms, and allowed Governor McTavish to resume the administration of public affairs. In such case, by the Act of the Imperial Parliament of last session, all the public functionaries will still remain in power, and the council of Assiniboia will be restored to their former position.

Will you be kind enough to make full explanation to the council on behalf of the Canadian government, as to the feelings which animate, not only the Governor General but the whole government, with respect to the mode of dealing with the North-west



We have fully explained to you, and desire you to assure the council authoritatively, that it is the intention of Canada to grant to the people of the North-west the same free institutions which they themselves enjoy.

Had not these unfortunate events occurred, the Canadian government had hoped long ere this, to have received a report from the council, through Mr. McDougall, as to the best means of speedily organizing the government, with representative institutions. I hope that they will be able immediately to take up that subject, and to consider and report, without delay, on the general policy that should immediately be adopted.

It is obvious that the most inexpensive mode for the administration of affairs should at first be adopted. As the preliminary expense of organizing the government after union with Canada must, in the first, be defrayed from the Canadian treasury, there will be a natural objection in the Canadian parliament to a large expenditure.

As it would be unwise to subject government of the territory to a recurrence of the humiliation already suffered by Governor McTavish, you can inform him that if he organizes a local police, of twenty-five men, or more if absolutely necessary, that the expense will be defrayed by the Canadian government.

You will be good enough to endeavour to find out Monkman, the person to whom, through Colonel Dennis, Mr. McDougall gave instructions to communicate with the Saulteux Indians. He should be asked to surrender his letter, and informed that he ought not to proceed upon it. The Canadian government will see that he is compensated for any expense that he has already incurred.

In case a delegation is appointed to proceed to Ottawa, you can assure them that they will be kindly received, and their suggestions fully considered. Their expenses coming here and returning, and whilst staying in Ottawa, will be defrayed by us.

You are authorized to state that the two years which the present tariff shall remain undisturbed will commence from the 1st January, 1871, instead of last January, as first proposed.

Should the question arise as to the consumption of any stores or goods belonging to the Hudson Bay Company by the insurgents, you are authorized to inform the leaders that if the company's government is restored, not only will there be a general amnesty granted, but in case the company should claim the payment for such stores, that the Canadian government will stand between the insurgents and all harm.

Wishing you a prosperous journey and happy results.

I beg to remain, &c.,

JOHN A. MACDONALD.

V. PETITION FROM MEMBERS OF THE LEGISLATIVE ASSEMBLY OF MANITOBA, TO HIS  
EXCELLENCY THE GOVERNOR GENERAL.

To the Right Honourable SIR FREDERICK ARTHUR STANLEY, Baron Stanley of Preston,  
Governor General of Canada, &c., &c.

*May it please Your Excellency :*

The petition of the undersigned dutiful subjects of Her Most Gracious Majesty, and members of the legislative assembly of the province of Manitoba, most humbly sheweth :—

That the seventh legislature of the province of Manitoba, in its third session, which day of opened on the 30th January, A. D. 1890, and prorogued on the 31st day of March of the same year, has passed, amongst others, two Acts respectively intituled : "An Act respecting the Department of Education," a copy of which is shown in Dominion Sessional Paper No. 63, 1891, page 12, and "an Act respecting Public Schools," a copy of which is shown in the same Sessional Paper, page 14.

That the said Act, intituled : "An Act respecting the Department of Education," although passed by the said legislature as aforesaid, did not receive the approval of any

of the members (whether of the Roman Catholic or Protestant persuasion) belonging to Her Majesty's loyal opposition in the said legislative assembly, as shown by a copy of the journals of the House, contained in Appendix "C" hereto attached, but, on the contrary, received the reproof of all the members of Her Majesty's said loyal opposition, except that of Mr. Lagimodière, a Roman Catholic, and member for La Verandrye, who was detained from his parliamentary duties through serious illness prevailing in his family; and that the said Act, intituled: "An Act respecting Public Schools," although passed by the said legislative assembly as aforesaid, did not receive the approval of any of the members (whether of the Roman Catholic or Protestant persuasion) belonging to Her Majesty's loyal opposition in the said legislative assembly, but on the contrary, received the reproof of all of the said members, as again shown by the copy of the journals of the House, contained in Appendix "C" hereto attached.

That the said bills violate the sacred and constant rights of Her Majesty's Roman Catholic subjects of the province of Manitoba, in relation to education; and

That for reasons more fully set forth in Appendix "D" the said bills are *ultra vires*, and have been passed in defiance of the Imperial Parliament, under whose sanction the British North America Act, 1867, and the British North America Act, 1871, 34-35 Victoria, chapter 28, were enacted.

Your petitioners, therefore, humbly pray that Your Excellency may be pleased to take such action and grant such relief and remedy as to Your Excellency may seem meet and just.

And your petitioners, as in duty bound, shall ever pray:

JAMES E. P. PRENDERGAST, M.P.P. for

Woodlands,

R. E. O'MALLEY, M.P.P. for Lorne,

THOMAS GELLEY, M.P.P. for Cartier,

WM. LAGIMODIÈRE, M.P.P. for La  
Verandrye,

ERNEST J. WOOD, M.P.P. for Cypress,

ROYER MARION, M.P.P. for St. Boniface.

MARTIN JÉRÔME, M.P.P. for Carillon.

A. F. MARTIN, M.P.P. for Morris.

WINNIPEG, 14th April, 1890.

VI. PETITION FROM CARDINAL ARCHBISHOP OF QUEBEC, ARCHBISHOPS AND BISHOPS OF THE  
ROMAN CATHOLIC CHURCH.

*To His Excellency the Governor General Council:*

The petition of the cardinal archbishop of Quebec, and of the archbishops and bishops of the Roman Catholic Church in the Dominion of Canada, subjects of Her Gracious Majesty the Queen.

Humbly sheweth: That the seventh legislature of the province of Manitoba, in its third session assembled, has passed an Act intituled: "An Act respecting the Department of Education" and another Act to be cited "The Public School Act," which deprive the Roman Catholic minority of the province of the rights and privileges they enjoyed with regard to education;

That during the same session of the same parliament, there was passed another Act, being fifty-three Victoria, chap. 14, to the effect of abolishing the official use of the French language in the parliament and courts of justice of the said province;

That the said laws are contrary to the dearest interests of a large portion of the loyal subjects of Her Majesty;

That the said laws cannot fail to grieve, and in fact do afflict, at least the half of the devoted subjects of Her Majesty in her domains of Canada;

That the said laws are contrary to the assurances given, in the name of Her Majesty, to the population of Manitoba, during the negotiations which determined the entry of the said province into confederation;

That the said laws are a flagrant violation of the British North America Act, 1867, and of the Manitoba Act, 1870, and of the British North America Act, 1871; that

your petitioners are justly alarmed at the disadvantages and even the dangers which would be the result of a legislation, forcing on its victims the conviction that public good faith is violated with them, and that advantage is taken of their numerical weakness, to strike at the constitution under which they are so happy to live.

Therefore, your petitioners humbly pray your Excellency in Council to afford a remedy to the pernicious legislation above mentioned, and that in the most efficacious and just way.

And your petitioners will, as in duty bound, ever pray.

E. A. Card. TASCHEREAU, Arch. of Quebec;	L. Z., Bishop of St. Hyacinthe ;
ALAX., Arch. of St. Boniface, O.M.I. ;	N. ZÉPHIRIN, Bishop of Cythère Vic. Apost.
C. O'BRIEN, Arch. of Halifax ;	of Pontiac ;
EDOUARD CH. Arch. of Montreal ;	ELPHÈGE, Bishop of Nicolet ;
J. THOMAS, Arch. of Ottawa ;	THOMAS JOSEPH DOWLING, Bishop of Hamil-
JOHN WALSH, Arch. of Toronto ;	ton ;
J. FARRELLY, Administrator, Diocese of Kingston ;	J. N. LEMMENS, Bp. of Vancouver ;
JEAN, Arch. of Leontopolis ;	RICHARD A. O'CONNOR, Bp. of Peter-
VITAL, J., Bishop of St. Albert ;	boro ;
JOHN SWEENEY, Bishop of St. John ;	ANDRÉ ALBERT, Bp. of St. Germain de
PETER MCINTYRE, Bishop of Charlotte-	Rimouski ;
town ;	ALEXANDER MACDONELL, Bishop of Alex-
ISIDORE CLUT, O. M. I., Bishop of d'	J. C. McDONALD, Tit. Bp. of Irina ;
Arindèle ;	DENNIS O'CONNOR, Bp. of London ;
L. F., Bishop of Three Rivers ;	N. DOUCET, Pte., V. G., Prot. Apost.
T. O'MAHONY, Bishop of Eudocia ;	Administrator of the Diocese of Chi-
J. CAMERON, Bishop of Antigonish ;	coutimi, during the absence of Mgr.
ANTOINE, Bishop of Sherbrooke ;	Bégin, in Europe.
PAUL DURIEU, O.M.I., Bishop of New	
Westminster ;	

MONTREAL, 6th March, 1891.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st March, 1891.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the two Acts of the following titles, passed by the legislature of the province of Manitoba at its session held in the year 1890, which Acts were received by the Honourable the Secretary of State on the 11th April, 1890 :—

Chapter 37, "An Act respecting the department of education," and Chapter 38, "An Act respecting the Public Schools."

The first of these Acts creates a department of education, consisting of the executive council or a committee thereof appointed by the Lieutenant-Governor in Council, and defines its powers. It also creates an advisory board, partly appointed by the department of education and partly elected by teachers, and defines its powers.

The "Act respecting Public Schools" is a consolidation and amendment of all previous legislation in respect to public schools. It repeals all legislation which created and authorized a system of separate schools for Protestants and Roman Catholics. By the Acts previously in force either Protestants or Roman Catholics could establish a school in any school district, and Protestant ratepayers were exempted from contribution for the Catholic schools, and Catholic ratepayers were exempted from contribution for Protestant schools.



The two Acts now under review purport to abolish these distinctions as to the schools, and these exemptions as to ratepayers, and to establish instead a system under which public schools are to be organized in all the school districts, without regard to the religious views of the ratepayers.

The right of the province of Manitoba to legislate on the subject of education is conferred by the Act which created the province, viz., 32-33 Vic, chap. 3 (The Manitoba Act), section 22, which is as follows:—

“22. In and for the province of Manitoba, the said legislature may exclusively make laws in relation to education, subject to the following provisions:—

“(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

“(2.) An appeal shall lie to the Governor General in Council from the Act or decision of the legislature of the province, or of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

“(3.) In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor in Council, on any appeal under this section, is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.”

In the year 1870, when the “Manitoba Act” was passed there existed no system of education established or authorized by law, but at the first session of the provincial legislature in 1871 an “Act to establish a System of Education in the Province” was passed. By that Act the Lieutenant-Governor in Council was empowered to appoint not less than ten nor more than fourteen to be a board of education for the province, of whom one-half were to be Protestants and the other half Catholics, with one superintendent of Protestant and one superintendent of Catholic schools. The board was divided into two sections, Protestant and Catholic, each section to have under its control and management, the discipline of the schools of its faith, and to prescribe the books to be used in the schools under its care which had reference to religion or morals.

The moneys appropriated for education by the legislature were to be divided equally, one moiety thereof to the support of Protestant schools, and the other moiety to the support of Catholic schools.

By an Act passed in 1875, the board was increased to twenty-one, twelve Protestants and nine Roman Catholics; the moneys voted by the legislature were to be divided between the Protestant and Catholic schools in proportion to the number of children of school age in the schools under the care of Protestant and Catholic sections of the board respectively.

The Act of 1875 also provided that the establishment in a school district of a school of one denomination should not prevent the establishment of a school of another denomination in the same district.

Several questions have arisen as to the validity and effect of the two statutes now under review; among these are the following:—

It being admitted that “no class of persons” (to use the expression of the Manitoba Act) had “by law,” at the time the province was established, “any right or privilege with respect to denominational (or any other) school,” had “any class of persons” any such right or privilege with respect to denominational schools “by practice” at that time? Did the existence of separate schools for Roman Catholic children, supported by Roman Catholic voluntary contributions, in which their religion might be taught and in which text books suitable for Roman Catholic schools were used, and the non-existence of any system by which Roman Catholics or any other could be compelled to contribute for the support of schools, constitute a “right or privilege” for Roman Catholics “by practice” within the meaning of the Manitoba Act? The former of these, as will at once be seen, was a question of fact and the latter a question of law, based on the

assumption, which has since been proved to be well founded, that the existence of separate schools at the time of the "union" was the fact on which the Catholic population of Manitoba must rely as establishing their "right or privilege" "by practice." The remaining question was whether, assuming the foregoing questions, or either of them, to require an affirmative answer, the enactments now under review, or either of them, affected any such "right or privilege?"

It became apparent at the outset that these questions required the decisions of the judicial tribunals, more especially as an investigation of facts was necessary to their determination. Proceedings were instituted with a view to obtaining such a decision in the Court of Queen's Bench of Manitoba several months ago, and in course of these proceedings the facts have been easily ascertained, and the two latter of the three questions above stated were presented for the judgment of that court with the arguments of counsel for the Roman Catholics of Manitoba on the one side, and of counsel for the provincial government on the other.

The court has practically decided, with one dissentient opinion, that the Acts now under review do not "prejudicially affect any right or privilege with respect to denominational schools" which Roman Catholics had by "practice at the time of the union," or, in brief, that the non-existence, at that time, of a system of public schools and the consequent exemption from taxation for the support of public schools and the consequent freedom to establish and support separate or "denominational" schools did not constitute a right or privilege "by practice" which these Acts took away.

An appeal has been asserted and the case is now before the Supreme Court of Canada, where it will, in all probability, be heard in the course of next month.

If the appeal should be successful, these Acts will be annulled by judicial decision; the Roman Catholic minority of Manitoba will receive protection and redress. The Acts purporting to be repealed will remain in operation, and those whose views have been represented by a majority of the legislature cannot but recognize that the matter has been disposed of with due regard to the constitutional rights of the province.

If the legal controversy should result in the decision of the Court of Queen's Bench being sustained, the time will come for your Excellency to consider the petitions which have been presented by and on behalf of the Roman Catholics of Manitoba for redress under subsections 2 and 3 of section 22 of the "Manitoba Act" quoted in the early part of this report, and which are analogous to the provisions made by the British North America Act, in relation to the other provinces.

Those subsections contain in effect the provisions which have been made as to all the provinces and are obviously those under which the constitution intended that the government of the Dominion should proceed if it should at any time become necessary that the federal powers should be resorted to for the protection of a Protestant or Roman Catholic minority against any Act or decision of the Legislature of the province, or of any provincial authority, affecting any "right or privilege" of any such minority "in relation to education."

Respectfully submitted,

JNO S. D. THOMPSON,  
*Minister of Justice.*

Subsequent to the passing of the Order in Council of the 4th April 1891, upon the report of the Hon. the Minister of Justice, the following petitions were presented, complaining of the Acts in question, and asking that the appeal of the Roman Catholics in Manitoba might be entertained and considered.

1. Petition dated 20th September, 1892, from T. A. Bernier, acting president, and the members of the Executive Committee of the National Congress.

2. Petition dated 22nd September, 1892, from the Most Rev. Archbishop Taché of St. Boniface.

3. Petition dated November 1892 from the Most Rev. Archbishop Taché; T. A. Bernier, president of the National Congress; and J. E. P. Prendergast, mayor of St. Boniface, the very Rev. I. Allard, O.M.I., V.G., and 137 others.

4. Memorandum from the Conservative League of Montreal, dated 30th November 1892.

These petitions among other things alleged :—

(a.) That the statutes complained of had deprived the Roman Catholic minority, of the rights or privileges of a separate condition as regards education, and of a system of public education in the province, which they had personally enjoyed by the Education Acts passed since the union.

(b.) That their schools had been merged with those of Protestant denominations.

(c.) That they were required to contribute, through taxation, to the support of schools which are called public schools, but are in substance a continuation of the old Protestant schools.

(d.) That the religious exercises in the public schools are not acceptable to them, and praying that the Governor General in Council would, pursuant to the British North America Act 1867, section 93, subsection three, and the Manitoba Act, section 22, subsection 2, hear and entertain the memorialists' appeal from the statutes complained of.

The contentions of the memorialists were :—

(1) That the statutes complained of had prejudicially affected rights and privileges in relation to education, which they had acquired since the union.

(2.) That by subsection 2 of subsection 22 of the Manitoba Act, an appeal would lie to the Governor General in Council, from any Act of the provincial legislature, affecting such rights and privileges, even though the Acts were *intra vires* and constitutional.

(3.) That by virtue of section 2 of the Manitoba Act ; subsection 3, of section 93, of the British North America Act, 1867, applied to Manitoba, and that a similar right of appeal was provided by that section.

The above petitions were referred by the Governor General in Council to a sub-committee of Council for report, who met on the 28th November, 1892, to consider the same. Counsel (J. S. Ewart, Q C., of Winnipeg) for the petitioners was present, and having formally presented the petitions, addressed the sub-committee in support thereof.

The petitions having been considered the following report was made thereon, which was approved by his Excellency in Council, as follows :—

*Order in Council, approved by His Excellency the Governor General on the 29th of December, 1892.*

The committee of the Privy Council have had under consideration a report, hereto annexed, from a sub-committee of Council, to whom were referred certain memorials to your Excellency, complaining of two statutes of the legislature of Manitoba, relating to education, passed in the session of 1890.

The committee, concurring in the report of the sub-committee, submit the same for your Excellency's approval, and recommend that Saturday, the 21st day of January, 1893, at the chamber of the Privy Council at Ottawa, be fixed as the day on which the parties concerned shall be heard with regard to the appeal in the matter of the said statutes.

The committee further advise that a copy of this minute, if approved, together with a copy of the report of the sub-committee of Council, be transmitted to the Lieutenant-Governor of Manitoba.

JOHN J. MCGEE,

*Clerk of the Privy Council.*

*Report of the Sub-Committee of the Hon. the Privy Council, approved by His Excellency the Governor General in Council on the 29th December, 1892.*

COUNCIL CHAMBER, OTTAWA, Dec., 1892.

*To His Excellency the Governor General in Council :*

The sub-committee to whom were referred certain memorials, addressed to your Excellency in Council, complaining of two statutes of the legislature of Manitoba,



relating to education, passed in the session of 1890, have the honour to make the following report :—

The first of these memorials is from the officers and executive committee of the "National Congress," an organization which seems to have been established in June, 1890, in Manitoba.

This memorial sets forth that two Acts of the legislature of Manitoba, passed in 1890, intituled respectively, "An Act respecting the Department of Education" and "An Act respecting Public Schools," deprive the Roman Catholic minority in Manitoba of rights and privileges which they enjoyed with regard to education, previous to the establishment of the province, and since that time down to the passing of the Acts aforesaid, of 1890.

The memorial calls attention to the fact that, soon after the passage of those Acts, (and in the year 1891) a petition was presented to your Excellency, signed by a large number of the Roman Catholic inhabitants of Manitoba, praying that your Excellency might entertain an appeal on behalf of the Roman Catholic minority against the said Acts, and that it might be declared "that such Acts had a prejudicial effect on the rights and privileges, with regard to denominational schools, which the Roman Catholics had by law or practice, in the province, at the union;" also that directions might be given and provision made in the premises for the relief of the Roman Catholics of the province of Manitoba.

The memorial of the "National Congress" recites, at length, the allegations of the petition last hereinbefore referred to, as having been laid before your Excellency in 1891. The substance of those allegations seems to be the following: That, before the passage of the Act constituting the province of Manitoba, known as the "Manitoba Act," there existed, in the territory now constituting the province, a number of effective schools for children, which schools were denominational, some of them being erected and controlled by the authorities of the Roman Catholic Church, and others by the authorities of various Protestant denominations; that those schools were supported, to some extent by fees, and also by assistance from the funds contributed by the members of the church or denomination under whose care the school was established; that at that period the Roman Catholics had no interest in or control over the schools of Protestant denominations, nor had Protestants any interest in or control over the schools of Roman Catholics; that there were no public schools in the province, in the sense of state schools; that members of the Roman Catholic Church supported schools for their own children and for the benefit of Roman Catholic children, and were not under obligations to contribute to the support of any other schools.

The petition then asserted that, in consequence of this state of affairs, the Roman Catholics were separate from the rest of the community, in the matter of education, at the time of the passage of the Manitoba Act.

Reference is then made to the provisions of the Manitoba Act by which the legislature was restricted from making any law on the subject of education which should have a prejudicial effect on the rights and privileges, with respect to denominational schools, "which any class of persons had, by law or practice, in the province at the 'union.'"

The petition then set forth that, during the first session of the legislative assembly of the province of Manitoba an act was passed relating to education, the effect of which was to continue to the Roman Catholics the separate condition, with reference to education, which they had enjoyed previous to the union; and that ever since that time, until the session of 1890, no attempt was made to encroach upon the rights of the Roman Catholics in that regard; but that the two statutes referred to, passed in the session of 1890, had the effect of depriving the Roman Catholics altogether of their separate condition with regard to education, and merged their schools with those of the Protestant denominations, as they required all members of the community, whether Roman Catholic or Protestant, to contribute to the support of what were therein called "Public Schools," but what would be, the petitioners alleged, in reality a continuation of the Protestant schools.

After setting forth the objections which Roman Catholics entertain to such a system of education as was established by the Acts of 1890, the petitioners declared

that they appealed from the Acts complained of, and they presented the prayer for redress which is hereinbefore recited.

The petition of the "Congress" then sets forth the minute of council, approved by your Excellency on the 4th April, 1891, adopting a report of the Minister of Justice, which set out the scope and effect of the legislation complained of, and also the provisions of the Manitoba Act with reference to education. That report stated that a question had arisen as to the validity and effect of the two statutes of 1890, reference to as the subject of the appeal, and intimated that those statutes would probably be held to be *ultra vires* of the legislature of Manitoba, if they were found to have prejudicially affected "any right or privilege with respect to denominational schools, which any class of persons had, by law or practice, in the province, at the union." The report suggested that questions of fact seemed to be raised by the petitions, which were then under consideration, as to the practice in Manitoba with regard to schools, at the time of the union, and also questions of law as to whether the state of facts then existing constituted a "right or privilege" of the Roman Catholics, within the meaning of the saving clauses in the Manitoba Act, and as to whether the Acts complained of (of 1890) had "prejudicially affected" such "right or privilege." The report set forth that these were obviously questions to be decided by a legal tribunal, before the appeal asserted by the petitioners could be taken up and dealt with, and that if the allegations of the petitioners and their contentions as to the law, were well founded, there would be no occasion for your Excellency to entertain or to act upon the appeal, as the courts would decide the Act to be *ultra vires*. The report and the minute adopting it, were clearly based on the view that consideration of the complaints and appeal of the Roman Catholic minority, as set forth in the petitions, should be deferred until the legal controversy should be determined, as it would then be ascertained whether the appellants should find it necessary to press for consideration of their application for redress under the saving clauses of the British North America Act, and the Manitoba Act, which seemed, by their view of the law, to provide for protection of the rights of a minority against legislation (within the competence of the legislature), which might interfere with rights which had been conferred on the minority, *after the union*.

The memorial of the "Congress" goes on to state that the Judicial Committee of the Privy Council, in England, has upheld the validity of the Acts complained of, and the "memorial" asserts that the time has now come for your Excellency to consider the petitions which have been presented by and on behalf of the Roman Catholics of Manitoba, for redress under subsections 2 and 3 of section 22 of the Manitoba Act.

There was also referred to the sub-committee a memorial from the Archbishop of Saint Boniface, complaining of the two Acts of 1890, before mentioned, and calling attention to former petitions on the same subject, from members of the Roman Catholic minority in the province. His Grace made reference, in this memorial, to assurances which were given by one of your Excellency's predecessors before the passage of the Manitoba Act, to redress all well-founded grievances, and to respect the civil and religious rights and privileges of the people of the Red River Territory. His Grace then prayed that your Excellency should entertain the appeal of the Roman Catholics of Manitoba and might consider the same, and might make such directions for the hearing and consideration of the appeal as might be thought proper, and also give directions for the relief of the Roman Catholics of Manitoba.

The sub-committee also had before them a memorandum made by the "Conservative League" of Montreal, remonstrating against the (alleged) unfairness of the Acts of 1890, before referred to.

Soon after the reference was made to the sub-committee, of the memorial of the "National Congress," and of the other memorials just referred to, intimation was conveyed to the sub-committee, by Mr. John S. Ewart, counsel for the Roman Catholic minority in Manitoba, that in his opinion, it was desirable that a further memorial, on behalf of that minority, should be presented, before the pending application should be dealt with, and action on the part of the sub-committee was therefore delayed until the further petition should come in.

Late in November this supplementary memorial was received and referred to the sub-committee. It is signed by the Archbishop of Saint Boniface, and by the president of the "National Congress," the Mayor of St. Boniface, and about 137 others, and is presented in the name of the "Members of the Roman Catholic Church resident in the province of Manitoba."

Its allegations are very similar to those hereinbefore recited, as being contained in the memorial of congress, but there is a further contention that the two Acts of the legislative assembly of Manitoba, passed in 1890, on the subject of education, were "subversive of the rights and privileges of the Roman Catholic minority provided for by the statutes of Manitoba, prior to the passing of the said Acts of 1890, thereby violating both the British North America Act and the Manitoba Act."

The last mentioned memorial urged:—

(1.) That your Excellency might entertain the appeal and give directions for its proper consideration.

(2.) That your Excellency should declare that the two Acts of 1890 (chapters 37 and 38), do prejudicially affect the rights and privileges of the minority, with regard to denominational schools, which they had by law or practice, in the province, at the union.

(3.) That it may be declared that the said Acts affect the rights and privileges of Roman Catholics in relation to education.

(4.) That a re-enactment may be ordered by your Excellency, of the statutes in force in Manitoba, prior to these Acts of 1890, in so far, at least, as may be necessary to secure for Roman Catholics in the province, the right to build, maintain, &c., their schools, in the manner provided by such statutes, and to secure to them their proportionate share of any grant made out of public funds of the province for education, or to relieve such members of the Roman Catholic Church as contribute to such Roman Catholic schools, from payment or contribution to the support of any other schools; or that these Acts of 1890 should be so amended as to effect that purpose.

Then follows a general prayer for relief.

In making their report the sub-committee will comment only upon the last memorial presented, as it seems to contain, in effect, all the allegations embraced in the former petitions which call for their consideration, and is more specific as to the relief which is sought.

As to the request which the petitioners make in the second paragraph of their prayer, viz.: "That it may be declared that the said Acts (53 Vic., 37 and 38) do prejudicially affect the rights and privileges with regard to denominational schools which the Roman Catholics had by law or practice in the province of Manitoba at the time of the union," the sub-committee are of opinion that the judgment of the Judicial Committee of the Privy Council is conclusive as to the rights with regard to denominational schools which the Roman Catholics had at the time of the union, and as to the bearing thereon of the statutes complained of, and your Excellency is not, therefore, in the opinion of the sub-committee, properly called upon to hear an appeal based on those grounds. That judgment is as binding on your Excellency as it is on any of the parties to the litigation, and, therefore, if redress is sought on account of the state of affairs existing in the province at the time of the union, it must be sought elsewhere, and by other means than by way of appeal under the sections of the British North America Act and of the Manitoba Act, which are relied on by the petitioners as sustaining this appeal.

The two Acts of 1890, which are complained of, must, according to the opinion of the sub-committee, be regarded as within the powers of the Legislature of Manitoba, but it remains to be considered whether the appeal should be entertained and heard, as an appeal against statutes which are alleged to have encroached on rights and privileges with regard to denominational schools which were acquired by any class of persons in Manitoba, *not at the time of the union, but after the union.*

The sub-committee were addressed by the counsel for the petitioners as to the right to have the appeal heard, and from his argument, as well as from the documents, it would seem that the following are the grounds of the appeal:—



A complete system of separate and denominational schools, *i. e.*, a system providing for public schools and for separate Catholic schools, was, it is alleged, established by statute of Manitoba in 1871 and by a series of subsequent Acts. The system was in operation until the two Acts of 1890 (chapters 37 and 38) were passed.

The 93rd section of the British North America Act, in conferring power on the provincial legislatures, exclusively to make laws in relation to education, imposed on that power certain restrictions, one of which was (subsection 1) to preserve the right with respect to denominational schools which any class of persons had by law in the province at the union. As to this restriction it seems to impose a condition on the validity of any Act relating to education, and the sub-committee have already observed that no question, it seems to them, can arise, since the decision of the Judicial Committee of the Privy Council,

The third subsection, however, is as follows :—

“Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor General in Council, from any Act or decision of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen’s subjects in relation to education.”

The Manitoba Act passed in 1870, by which the province of Manitoba was constituted, contains the following provisions as regards that province :—

By section 22 the power is conferred on the legislature exclusively to make laws in relation to education, but subject to the following restrictions :

(1.) “Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have, by law or practice, in the province, at the union.”

This restriction, the sub-committee again observe, has been dealt with by the judgment of the Judicial Committee of the Privy Council.

Then follows :

(2.) “An appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen’s subjects in relation to education.”

It will be observed that the restriction contained in subsection 2 is not identical with the restriction of subsection 3 of the 93rd section of the British North America Act, and questions are suggested, in view of this difference, as to whether subsection 3 of section 93 of the British North America applies to Manitoba, and if not, whether subsection 2 of section 22 of the Manitoba Act is sufficient to sustain the case of the appellants : or in other words, whether, in regard to Manitoba, the minority has the same protection against laws, which the legislature of the province has power to pass, as the minorities in other provinces have, under the subsection before quoted from the British North America Act, as to separate or denominational schools established after the union.

The argument presented by Counsel on behalf of the petitioners was, that the present appeal comes before your Excellency in Council, not as a request to review the decision of the Judicial Committee of the Privy Council, but as a logical consequence and result of that decision, inasmuch as the remedy now sought is provided by the British North America Act and the Manitoba Act, not as a remedy to the minority against statutes which interfere with the rights which the minority had at the time of the union, but as a remedy against statutes, which interfere with rights acquired by the minority after the union. The remedy, therefore, which is sought, is against Acts which are *intra vires* of the provincial legislature. His argument is also that the appeal does not ask your Excellency to interfere with any rights or powers of the legislature of Manitoba, inasmuch as the power to legislate on the subject of education has only been conferred on that legislature with the distinct reservation that your Excellency in Council shall have power to make remedial orders against any such legislation, which infringes on rights acquired after the union, by any Protestant or Roman Catholic minority in relation to separate or dissentient schools.

Upon the various questions which arise on these petitions the sub-committee do not feel called upon to express an opinion, and so far as they are aware, no opinion has been expressed on any previous occasion in this case or any other of a like kind, by your Excellency's government or any other government of Canada. Indeed, no application of a parallel character has been made since the establishment of the Dominion.

The application comes before your Excellency in a manner differing from applications which are ordinarily made, under the constitution, to your Excellency in Council. In the opinion of the sub-committee, the application is not to be dealt with at present as a matter of a political character, or involving political action on the part of your Excellency's advisers. It is to be dealt with by your Excellency in Council, regardless of the personal views which your Excellency's advisers may hold with regard to denominational schools, and without the political action of any of the members of your Excellency's Council being considered as pledged by the fact of the appeal being entertained and heard. If the contention of the petitioners be correct, that such an appeal can be sustained, the inquiry will be rather of a judicial than a political character. The sub-committee have so treated it in hearing counsel, and in permitting their only meeting to be open to the public. It is apparent that several other questions will arise, in addition to those which were discussed by counsel at that meeting, and the sub-committee advises that a date be fixed, at which the petitioners, or their counsel, may be heard with regard to the appeal, according to their first request.

The sub-committee think it proper that the government of Manitoba should have an opportunity to be represented at the hearing, and they further recommend, with that view, that if this report should be approved, a copy of any minute approving it, and of any minute fixing the date of the hearing with regard to the appeal, be forwarded, together with copies of all the petitions referred to, to his Honour the Lieutenant-Governor of Manitoba, for the information of his Honour's advisers.

In the opinion of the sub-committee, the attention of any person who may attend on behalf of the petitioners, or on behalf of the provincial government, should be called to certain parliamentary questions which seem to arise with regard to the appeal.

Among the questions which the sub-committee regard as preliminary are the following :—

(1.) Whether this appeal is such an appeal as is contemplated by subsection 3 of section 93 of the British North America Act, or by subsection 2 of section 22 of the Manitoba Act.

(2.) Whether the grounds set forth in the petitions are such as may be the subject of appeal under either of the subsections above referred to.

(3.) Whether the decision of the Judicial Committee of the Privy Council in any way bears on the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union have been interfered with by the two statutes of 1890 before referred to.

(4.) Whether subsection 3 of section 93 of the British North America Act applies to Manitoba.

(5.) Whether your Excellency in Council has power to grant such orders as are asked for by the petitioner, assuming the material facts to be as stated in the petition.

(6.) Whether the Acts of Manitoba, passed before the session of 1890, conferred on the minority a "right or privilege with respect to education," within the meaning of subsection 2 of section 22 of the Manitoba Act, or established "a system of separate or dissentient schools," within the meaning of subsection 3 of section 93 of the British North America Act, and if so, whether the two Acts of 1890, complained of, affect "the right or privilege" of the minority in such a manner as to warrant the present appeal.

Other questions of a like character may be suggested at the hearing, and it may be desirable that arguments should be heard upon such preliminary points before any hearing shall take place on the merits of the appeal.

Respectfully submitted,

JNO. S. D. THOMPSON, J. A. CHAPLEAU,  
M. BOWELL, T. MAYNE DALY,

Pursuant to the terms of the Order in Council of the 29th December, 1892, the appeal to the Governor General in Council was heard on the 21st January, 1893, in the Privy Council chamber. No representative was present on behalf of the government of Manitoba. Mr. J. S. Ewart, Q.C., counsel for the Most Rev. Archbishop Taché, and the Roman Catholic minority of Manitoba, was heard upon the points mentioned in the report of the sub-committee of Council, which was based upon the arguments addressed to them on 26th November, 1892.

The appeal having been considered by his Excellency in Council, the following Order was approved on the 22nd February, 1893.

*Order in Council, 22nd February, 1893.*

The Committee of the the Privy Council, having considered the arguments advanced by Mr. Ewart on behalf on the petitioners in Manitoba who have requested redress from your Excellency with respect to certain statutes of that province relating to education, are of opinion that the important questions of law which were suggested in the report of the sub-committee, to whom said petitions were referred, should be authoritatively settled before the appeal, which has been asserted by said petitions, be further proceeded with.

The Committee, therefore advise that a case be prepared on this subject in accordance with the provisions of the Act, 54-55 Vic., chapter 25, and they recommend that if this report be approved, a copy thereof be transmitted by telegraph to his Honour the Lieutenant-Governor of Manitoba, and to John S. Ewart, Q.C., counsel for the petitioners, in order that, if they be so disposed, the government of Manitoba and the said counsel may offer suggestions as to the preparation of such a case, and as to the questions which should be embraced therein.

JOHN J. MCGEE,  
*Clerk of the Privy Council.*

In compliance with the terms of the Order in Council above mentioned, the following "Case," approved by order of His Excellency the Governor General in Council, dated 8th July, 1893, was, by Order in Council of the 31st January, 1893, referred to the Supreme Court for hearing and determination.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 8th July, 1893.*

On a report dated 7th July, 1893, from the Acting Minister of Justice, submitting that in conformity with an order of your Excellency in Council, dated 22nd April 1893, a draft case prepared for reference to the Supreme Court of Canada, touching certain statutes of the province of Manitoba relating to education, and the memorials of certain petitioners in Manitoba complaining thereof, was communicated to the Lieutenant-Governor of Manitoba, and to Mr. John S. Ewart, Q. C., counsel for the petitioners, for such suggestions and observations as they might respectively desire to make in relation to such case, and the questions which should be embraced therein. No reply has been received from the Lieutenant-Governor of Manitoba. Mr. Ewart, under date 4th May, 1893, has made certain observations and suggestions which he, the Minister, has had under consideration. The minister upon such consideration has made some amendments to the draft case which he submits for your Excellency's approval.

The minister recommends that the case as amended, copy of which is herewith submitted, be approved by your Excellency, and that copies thereof be transmitted to the Lieutenant-Governor of Manitoba and to Mr. Ewart, with the information that the



same is the case which it is proposed to refer to the Supreme Court of Canada touching the statutes and memorials above referred to.

The Committee submit the same for your Excellency's approval.

JOHN J. McGEE,  
*Clerk of the Privy Council.*

OTTAWA, 7th July, 1893.

CASE submitted to the Supreme Court of Canada by his Excellency the Governor General in Council, pursuant to the authority of the Revised Statutes of Canada, chapter 135, intituled: "An Act respecting the Supreme and Exchequer Courts," as amended by section 4 of chapter 25 of the Acts of Parliament of Canada, passed in the 54th and 55th year of Her Majesty's reign, intituled: "An Act to amend chapter 135 of the Revised Statutes, intituled, 'An Act respecting the Supreme and Exchequer Courts.'"

Annexed hereto is an order of his Excellency the Governor General in Council, made on the 29th December, 1892, approving of a report of a sub-committee of Council thereto annexed upon certain memorials complaining of two statutes of the legislature of Manitoba relating to education, passed in the session of 1890. The memorials therein referred to, and all correspondence in connection therewith, are hereby made part of this case, together with all statutes, whether provincial, Dominion or Imperial, in any wise dealing with, or affecting the subject of education in Manitoba, and all proceedings had or taken before the Court of Queen's Bench, Manitoba, the Supreme Court of Canada, and the Judicial Committee of the Privy Council in the cases of *Barrett vs. the City of Winnipeg*, and *Logan vs. the City of Winnipeg*; and all decisions or judgments in such cases are to be considered as part of this case and are to be referred to accordingly.

The questions for hearing and consideration by the Supreme Court of Canada being the same as those indicated in the report of the sub-committee of Council above referred to, are as follows:—

(1.) Is the appeal referred to in the said memorials and petitions, and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of the British North America Act, 1867, or by subsection 2 of section 22 of the Manitoba Act, 33 Victoria (1870), chapter 3, Canada?

(2.) Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them?

(3.) Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett vs. the City of Winnipeg*, and *Logan vs. the City of Winnipeg*, dispose of, or conclude the application for redress based on the contention that the rights of the Roman Catholic minority, which accrued to them after the union under the statutes of the province, have been interfered with by the two statutes of 1890, complained of in the said petitions and memorials?

(4.) Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba?

(5.) Has his Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has his Excellency the Governor General in Council any other jurisdiction in the premises?

(6.) Did the Acts of Manitoba relating to education, passed prior to the session of 1890, confer on or continue to the minority a "right or privilege in relation to education" within the meaning of subsection 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools within the meaning of subsection 3 of section 93 of the British North America Act, 1867, if said section 93 be found to be applicable to Manitoba; and if so, did the two Acts of 1890 complained of, or either of them,

affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council?

The case was presented to the court on the 4th October, 1893, and on the 17th it was argued by counsel on behalf of appellants, and other Roman Catholic inhabitants of the province of Manitoba. Counsel for Manitoba appeared, but did not address the court. At the request of the court, Mr. Christopher Robinson, Q.C., argued the case as to the interest of Manitoba. After hearing and consideration, the judges certified to the Governor General in Council their opinion on the questions as referred to the court, with their reasons therefor. The majority of the court were of opinion that no appeal would lie to the Governor General in Council from the statutes complained of. For the judgment of the Supreme Court see *In Re certain statutes of the province of Manitoba relating to education. Sup. Ct. Repts., Vol. XXII, p. 577.*

The appellants thereupon, on behalf of themselves and the rest of the Roman Catholic minority in Manitoba, presented a petition to the Queen in Council for special leave to appeal from this decision of the Supreme Court. Such special leave having been granted, the appeal was heard by the Judicial Committee of the Privy Council on the 11th December, 1894, and following days. Mr. Edward Blake, Q.C., M.P., and Mr. J. S. Ewart, Q.C., appeared as Counsel for the appellants (the Roman Catholic minority) and Mr. Cozens Hardy, Q.C., M.P., Mr. Haldane, Q.C., M.P., and Mr. Reginald Bray, as counsel for the respondent (The Attorney General of Manitoba.)

On the 29th day of January, 1895, the Lords of the Judicial Committee delivered judgment, allowing the appeal and reversing the opinion of the Supreme Court of Canada. (*For Copy of judgment, see Brophy et al; vs. Attorney General, Manitoba. L. R. App. Cases 1895, p. 202.*)

#### IMPERIAL ORDER IN COUNCIL

At the Court at Osborne House, Isle of Wight,  
The 2nd day of February, 1895.

*Present :*

THE QUEEN'S MOST EXCELLENT MAJESTY.

Lord President,  
Marquess of Ripon,  
Lord Chamberlain,

Lord Kensington,  
Mr. Cecil Rhodes.

WHEREAS there was this day read at the board a report from the Judicial Committee of the Privy Council, dated the 29th January, 1895, in the words following, viz. :—

“Your Majesty having been pleased by your General Order in Council of the 23rd November, 1893, to refer unto this committee the matter of an Appeal from the Supreme Court of Canada, between Gerald F. Brophy, Noé Chevrier, Henry Napoléon Boire, Roger Goulet, Patrick O'Connor, Francis McPhillips, Frank J. Clark, Joseph Lecomte, Michael Hughes, Henry Brownrigg, Frank Brownrigg, Theophilus Tessier, L. Arthur Leveque, Edmond Trudel, Joseph Honoré Octavien Lambert, Jean Baptiste Poirier, George Couture, J. Ernest Cyr, François Jean David Dussault, Charles Edouard Masse, François Hardis, Joseph Buron, Louis Fournier, Phileas Trudeau, Edouard Guilbault, Romuald Gilbault, Alphonse Phaneuf, W. Cleophas German, Edward R. Lloyd, Louis Laventure and Louis J. Collin, all of the province of Manitoba, in the Dominion of Canada, on behalf of themselves, and of all other persons forming the Roman Catholic minority of Her Majesty's subjects in the said province, appellants, and the Attorney General of Manitoba, respondent, and likewise the humble petition of the above named appellants, setting forth that this is an appeal from certain opinions pronounced by the judges of the Supreme Court of Canada, on the 20th February, 1894 : that the case in reference to which such opinions were rendered, was on the 7th July, 1893, referred by the Gov-

ernor General of Canada in Council to the Supreme Court of Canada for hearing and consideration, pursuant to the provisions of an Act intituled "An Act respecting the Supreme and Exchequer Courts" (Revised Statutes of Canada, cap. 135) as amended by an Act of Canada, passed in 1891 (54-55 Vic., cap 25) : that the questions involved in the case, and in this appeal turn upon the construction of certain sections of "The British North America Act, 1867" and of "The Manitoba Act 1870" and upon the effect of certain statutes of the province of Manitoba, in relation to education in that province ; that the following questions were by the said case submitted for the opinion of the Supreme Court :—

"(1.) Is the appeal referred to in the said memorials and petitions, and asserted thereby, such an appeal as is admissible by subsection 3, of section 93, of the British North America Act, 1867, or by subsection 2 of section 22 of the Manitoba Act, 33 Victoria (1870), cap. 3, Canada?"

"(2.) Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them?"

"(3.) Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett vs. The City of Winnipeg*, and *Logan vs. The City of Winnipeg*, dispose of or conclude the application for redress, based on the contention that the rights of the Roman Catholic minority, which accrued to them after the union, under the statutes of the province, have been interfered with by the two statutes of 1890, complained of in the said petitions and memorials?"

"(4.) Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba?"

"(5.) Has his Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has his Excellency the Governor General in Council any other jurisdiction in the premises?"

"(6.) Did the Acts of Manitoba relating to education, passed prior to the session of 1890, confer on or continue to the minority a 'right or privilege in relation to education' within the meaning of subsection 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools within the meaning of subsection 3 of section 93 of the British North America Act, 1867, if said section 93 be found to be applicable to Manitoba; and if so, did the two Acts of 1890 complained of, or either of them, effect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council? that counsel for the appellants and for other Roman Catholic subjects of Her Majesty in the province of Manitoba and counsel for the province of Manitoba appeared before the Supreme Court, as did also the Solicitor General of Canada, who appeared to submit the case on behalf of Her Majesty's Crown: that the counsel for the province of Manitoba not desiring to be heard, the Supreme Court pursuant to section 4 of the Act of 1891, hereinbefore referred to, requested counsel to argue the case in the interest of the said province and counsel thereupon appeared and argued the case for the said province as did also counsel for the appellants and other Roman Catholics as aforesaid, but the Solicitor General for Canada did not desire to be heard: that the case came on for argument before five judges of the Supreme Court who on the 20th February, 1894, delivered their opinions thereon in the manner provided by the statute: that in the result the opinions of the judges of the Supreme Court showed a majority of three judges out of five for a negative answer to all the six questions submitted for the opinion of the Supreme Court: that the appellants feeling aggrieved by the said opinions presented a petition to your Majesty in Council, praying for special leave to appeal therefrom to your Majesty in Council and by your Majesty's Order in Council of the 27th June, 1894, leave to appeal was granted accordingly upon condition that the appellants should deposit the sum of £300 sterling in the registry of the Privy Council, as security for costs: that the said sum was deposited accordingly, and humbly praying that your Majesty in Council, will be pleased to take their said appeal into consideration, and that the said opinions of



judges of the Supreme Court of Canada of the 20th February, 1894, may be reversed or varied, or for other relief in the premises."

The lords of the committee in obedience to your Majesty's said general order of reference, have taken the said humble petition and appeal into consideration, and having heard counsel for the parties on both sides, their lordships do this day agree humbly to report to your Majesty as their opinion that the said questions hereinbefore set forth ought to be answered as follows :

(1.) In answer to the first question :—That the appeal referred to in the said memorials and petitions, and asserted thereby is such an appeal as is admissible under subsection 2 of section 22 of the Manitoba Act, 33 Vict. (1870), c. 3, Canada.

(2.) In answer to the second question :—That grounds are set forth in the petitions and memorials, such as may be the subject of appeal under the authority of the subsection of the Manitoba Act immediately above referred to.

(3.) In answer to the third question :—That the decision of the Judicial Committee of the Privy Council in the cases of *Barrett v. The City of Winnipeg*, and *Logan v. The City of Winnipeg* does not dispose of, or conclude, the application for redress based on the contention that the rights of the Roman Catholic minority, which accrued to them after the union under the statutes of the province, have been interfered with by the two statutes of 1890 complained of in the said petitions and memorials.

(4.) In answer to the fourth question :—That subsection 3 of section 93 of the British North America Act, 1867, does not apply to Manitoba.

(5.) In answer to the fifth question :—That the Governor General in Council has jurisdiction, and the appeal is well founded, but that the particular course to be pursued must be determined by the authorities to whom it has been committed by the statute ; that the general character of the steps to be taken is sufficiently defined by subsection 3 of section 22 of the Manitoba Act, 1870.

(6.) In answer to the sixth question :—That the Acts of Manitoba relating to education passed prior to the session of 1890 did confer on the minority a right or privilege in relation to education within the meaning of subsection 2 of section 22 of the Manitoba Act, which alone applies ; that the two Acts of 1890 complained of did affect a right or privilege of the minority in such a manner, that an appeal will lie thereunder to the Governor General in Council.

And in case your Majesty should be pleased to approve of this report, then their lordships do direct that the parties do bear their own costs of this appeal, and that the sum of £300 sterling so deposited by the appellants as aforesaid, be repaid to them."

Her Majesty having taken the said report into consideration, was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the recommendations and directions therein contained be punctually observed, obeyed, and carried into effect in each and every particular. Whereof the Governor General of the Dominion of Canada for the time being, and all other persons whom it may concern are to take notice and govern themselves accordingly.

C. L. PEEL.

After the hearing and determination of the said questions by Her Majesty in Council, the appeal of the Roman Catholic minority of the Queen's subjects, in the province of Manitoba, against the two statutes complained of, was heard before His Excellency the Governor General in Council, of the 20th February and on the 5th, 6th and 7th of March, 1895, counsel for the Roman Catholic minority and for the province of Manitoba having been heard, and the appeal considered, the following Remedial Order in Council was approved by his Excellency :—

## REMEDIAL ORDER IN COUNCIL.

AT THE GOVERNMENT HOUSE AT OTTAWA,  
TUESDAY, the 19th day of March, 1895.

*Present :*

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

The committee of the Privy Council have the honour to report that by the Act passed by the parliament of Canada in the thirty-third year of Her Majesty's reign, chapter three, intituled :

"An Act to amend and continue the Act 32 and 33 Victoria, chapter 3, and to establish and provide for the government of the province of Manitoba (commonly called and hereinafter cited as the Manitoba Act") which Act was confirmed by "The British North America Act, 1871" (34-35 Vic., chap. 28, Imp.) it is provided that :

"In and for the province of Manitoba the said legislature of the province may exclusively make laws in relation to education, subject and according to the following provisions :

1. "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

2. "An Appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

3. "In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

That by certain Acts of the legislature of the province of Manitoba passed after the Union, and by an Act passed by the said legislature in the forty-fourth year of Her Majesty's reign, chapter four, which may be cited as "The Manitoba School Act" and by the Acts amending the same, the Roman Catholic minority of Her Majesty's subjects in Manitoba acquired the rights and privileges in relation to education thereby conferred upon them, including the rights to build, maintain, equip, manage, conduct and support Roman Catholic schools in the manner provided by the said statutes, the right to a proportionate share of any grant made out of the public funds for the purpose of education, and the right of exemption of such members of the Roman Catholic Church, as contribute to such Roman Catholic schools from all payments or contributions to the support of any other schools.

That subsequently in the fifty-third year of Her Majesty's reign two statutes were passed by the legislature of the province of Manitoba relating to education, which statutes came into force on the first day of May, 1890, and are intituled respectively "An Act respecting the Department of Education" and "An Act respecting Public Schools."

That the Roman Catholic minority of Her Majesty's subjects in Manitoba considered that by the two statutes last mentioned, the aforesaid rights and privileges were affected, and that such minority was thereby deprived of said rights and privileges. That the said Roman Catholic minority thereupon appealed from the said two statutes last mentioned to the Governor General in Council, and by a petition presented on the 26th day of November, 1892, after setting out the facts of the case, prayed as follows :—

"That his Excellency the Governor General in Council might entertain the appeal, and might consider the same, and might make such provision and give such directions for the hearing and consideration of the said appeal as might be thought proper.

2. "That it might be declared that the said Acts (53 Victoria, chapters 37 and 38) do prejudicially affect the rights and privileges with regard to denominational schools, which Roman Catholics had by law or practice in the province at the union.

3. "That it might be declared that the said last mentioned Acts do affect the rights and privileges of the Roman Catholic minority of the Queen's subjects in relation to education.

4. "That it might be declared that to his Excellency the Governor General in Council, it seems requisite that the provisions of the statutes in force in the province of Manitoba, prior to the passage of the said Acts, should be re-enacted in so far at least as may be necessary to secure to the Roman Catholics in the said province the right to build, maintain, equip, manage, conduct and support these schools in the manner provided for by the said statutes, to secure to them their proportionate share of any grant made out of the public funds for the purposes of education, and to relieve such members of the Roman Catholic Church as contribute to such Roman Catholic schools, from all payment or contribution to the support of any other schools, or that the said Acts of 1890 should be so modified or amended as to effect such purposes.

5. "And that such further or other declaration or order might be made, as to his Excellency the Governor General in Council might, under the circumstances, seem proper, and that such direction might be given, provisions made and all things done in the premises, for the purpose of affording relief to the said Roman Catholic minority in the said province, as to his Excellency the Governor General in Council might seem meet."

That the said petition was referred by the Governor General in Council to a sub-committee of Council. The sub-committee sat on the 26th day of November, 1892, when Mr. Ewart, Q.C., on behalf of the Roman Catholic minority, presented the said petition and stated reasons in support of the right of appeal. That the report of the sub-committee thereon was approved by order of his Excellency in Council on the 29th day of December, 1892, and the 21st day of January, 1893, was then fixed as the day on which the parties concerned should be heard, with regard to the appeal. In the said report of the sub-committee, it is stated as follows:—

As to the request which the petitioners make in the second paragraph of their prayer, viz.:—"That it may be declared that the said Acts (53 Vic., chapters 37 and 38) do prejudicially affect the rights and privileges with regard to denominational schools which the Roman Catholics had by law or practice in the province of Manitoba at the time of the union," the sub-committee are of opinion that the judgment of the Judicial Committee of the Privy Council is conclusive as to the rights with regard to denominational schools which the Roman Catholics had at the time of the union, and as to the bearing thereon of the statutes complained of, and your Excellency is not, therefore, in the opinion of the sub-committee, properly called upon to hear an appeal based on those grounds. That judgment is as binding on your Excellency as it is on any of the parties to the litigation, and, therefore, if redress is sought on account of the state of affairs existing in the province at the time of the union, it must be sought elsewhere, and by other means than by way of appeal under the sections of the British North America Act and of the Manitoba Act, which are relied on by the petitioners as sustaining this appeal.

The two Acts of 1890, which are complained of, must, according to the opinion of the sub-committee, be regarded as within the powers of the legislature of Manitoba, but it remains to be considered whether the appeal should be entertained and heard as an appeal against statutes which are alleged to have encroached on rights and privileges with regard to denominational schools which were acquired by any class of persons in Manitoba, not at the time of the union, but after the union.

The sub-committee were addressed by counsel for the petitioners as to the right to have the appeal heard, and from his argument, as well as from the documents, it would seem that the following are the grounds of the appeal.

A complete system of separate and denominational schools, *i.e.* a system providing for public schools and for separate Catholic schools, was, it is alleged, established by statute of Manitoba in 1871 and by a series of subsequent Acts. That system was in operation until the two Acts of 1869 (chapters 37 and 38) were passed.



The 93rd section of the British North America Act, in conferring power on the provincial legislatures, exclusively, to make laws in relation to education, imposed on that power certain restrictions, one of which was (subsection 1) to preserve the right with respect to denominational schools, which any class of persons had by law in the province at the union. As to this restriction it seems to impose a condition on the validity of any Act relating to education, and the sub-committee have already observed that no question, it seems to them, can arise, since the decision of the Judicial Committee of the Privy Council.

The third subsection, however, is as follows :—

“Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor General in Council, from any Act or decision of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.”

The Manitoba Act passed in 1870, by which the province of Manitoba was constituted, contains the following provisions, as regards that province :—

By section 22 the power is conferred on the legislature, exclusively, to make laws in relation to education, but subject to the following restrictions :

1. “Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have, by law or practice, in the province, at the union.”

This restriction, the sub-committee again observe, has been dealt with by the judgment of the Judicial Committee of the Privy Council.

Then follows :—

2. “An appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.”

It will be observed that the restriction contained in subsection 3, is not identical with the restriction of subsection 3 of the 93rd section of the British North America Act, and questions are suggested, in view of this difference, as to whether subsection 3, of section 93 of the British North America Act, applies to the Manitoba Act, and if not, whether subsection 2, of section 22 of the Manitoba Act, is sufficient to sustain the case of the appellants ; or, in other words, whether in regard to Manitoba, the minority has the same protection against laws which the legislature of the province has power to pass, as the minorities in other provinces have under the subsection before quoted from the British North America Act, as to separate or denominational schools established after the union.

The argument presented by counsel on behalf of the petitioners was, that the present appeal comes before your Excellency in Canada, not as a request to review the decision of the Judicial Committee of the Privy Council, but as a logical consequence and result of that decision, inasmuch as the remedy now sought is provided by the British North America Act, and the Manitoba Act, not as a remedy to the minority against statutes which interfere with the rights which the minority had at the time of the union, but as a remedy against statutes which interfere with rights acquired by the minority after the union. The remedy, therefore, which is sought, is against Acts which are *intra vires* of the provincial legislature. His argument is also that the appeal does not ask your Excellency to interfere with any rights or powers of the legislature of Manitoba, inasmuch as the power to legislate on the subject of education has only been conferred on that legislature, with the distinct reservation that your Excellency in Council shall have power to make remedial orders against any such legislation which infringes on the rights acquired after the union by any Protestant or Roman Catholic minority in relation to separate or dissentient schools.

Upon the various questions which arise on these petitions the sub-committee do not feel called upon to express an opinion, and so far as they are aware, no opinion has been expressed, on any previous occasion in this case or any other of a like kind, by

your Excellency's government or any other government of Canada. Indeed, no application of a parallel character has been made since the establishment of the Dominion.

The application comes before your Excellency in a manner differing from applications which are ordinarily made, under the constitution, to your Excellency in Council. In the opinion of the sub-committee, the application is not to be dealt with at present as a matter of a political character, or involving political action on the part of your Excellency's advisers. It is to be dealt with by your Excellency in Council, regardless of the personal views which your Excellency's advisers may hold with regard to denominational schools, and without the political action of any of the members of your Excellency's Council being considered, as pledged by the fact of the appeal being entertained and heard. If the contention of the petitioners be correct, that such an appeal can be sustained, the inquiry will be rather of a judicial than a political character. The sub-committee have so treated it in hearing counsel, and in permitting their only meeting to be open to the public. It is apparent that several other questions will arise, in addition to those which were discussed by counsel at that meeting, and the sub-committee advise that a date be fixed, at which the petitioners, or their counsel, may be heard with regard to the appeal, according to their first request.

The sub-committee think it proper that the government of Manitoba should have an opportunity to be represented at the hearing, and they further recommend, with that view, that if this report should be approved, a copy of any minute approving it, and of any minute fixing the date of the hearing with regard to the appeal, be forwarded, together with copies of all the petitions referred to, to his Honour the Lieutenant-Governor of Manitoba, for the information of his honour's advisers.

In the opinion, of the sub-committee, the attention of any person who may attend on behalf of the petitioners, or on behalf the provincial government, should be called to certain preliminary questions which seem to arise with regard to the appeal.

Among the questions which the sub-committee regard as preliminary are the following:—

(1.) Whether this appeal is such an appeal as is contemplated by subsection 3 of section 93 of the British North America Act, or by subsection 2 of section 22 of the Manitoba Act.

(2.) Whether the grounds set forth in the petitions are such as may be the subject of appeal under either of the subsections above referred to.

(3.) Whether the decision of the Judicial Committee of the Privy Council in any way bears on the application for redress, based on the contention that the rights of the Roman Catholic minority which accrued to them after the union, have been interfered with by the two statutes of 1890 before referred to.

(4.) Whether subsection 3 of section 93 of the British North America Act applies to Manitoba.

(5.) Whether your Excellency in Council has power to grant such orders as are asked for by the petitioner, assuming the material facts to be as stated in the petition.

(6.) Whether the Acts of Manitoba, passed before the session of 1890, conferred on the minority a "right or privilege with respect to education," within the meaning of subsection 2 of section 22 of the Manitoba Act, or established "a system of separate or dissentient schools," within the meaning of subsection 3 of section 93 of the British North America Act, and if so, whether the two Acts of 1890, complained of, affect "the right or privilege" of the minority in such a manner as to warrant the present appeal.

Other questions of a like character may be suggested at the hearing, and it may be desirable that arguments should be heard upon such preliminary points before any hearing shall take place on the merits of the appeal.

That such appeal accordingly came on for hearing before the Governor General in Council on the 21st day of January, 1893, in the presence of counsel for the Roman Catholic minority, the province of Manitoba, though duly notified, not appearing and when after hearing what was alleged on behalf of the Roman Catholic minority, it was considered that certain questions of law arising upon the appeal should be referred to the Supreme Court of Canada for hearing and consideration, pursuant to the Supreme and Exchequer Courts Act (Revised Statutes of Canada, chapter 135) as amended by

the Act of 1891 (54-55 Victoria, cap. 25), and that the further hearing should be adjourned until the advice of the court had been obtained thereon.

That pursuant to the Supreme and Exchequer Court Acts as so amended, the following questions were therefore referred to the Supreme Court of Canada by the Governor General in Council, namely :—

(1.) “Is the appeal referred to in the said memorials and petitions and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of ‘The British North America Act, 1867,’ or by subsection 2 of section 22 of ‘The Manitoba Act,’ 1870, chapter 3 of Canada?”

(2.) “Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them?”

(3.) “Does the decision of the Judicial Committee of the Privy Council, in the case of *Barret vs. The City of Winnipeg*, and *Logan vs. The City of Winnipeg*, dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union, under the statutes of the province, have been interfered with by the two statutes of 1890, complained of in the said petitions and memorials?”

(4.) “Does the subsection 3 of section 93 of ‘The British North America Act, 1867,’ apply to Manitoba?”

(5.) “Has his Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has his Excellency the Governor General in Council any other jurisdiction in the premises?”

(6.) “Did the Acts of Manitoba relating to education, passed prior to the session of 1890, confer on or continue to the minority a “right or privilege in relation to education” within the meaning of subsection 2 of section 22 of ‘The Manitoba Act,’ or establish a system of separate or dissentient schools within the meaning of subsection 3 of section 93 of ‘The British North America Act, 1867,’ if said section 93 be found to be applicable to Manitoba; and if so, did the two Acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such manner that an appeal will lie thereunder to the Governor General in Council?”

That upon the hearing of the said reference before the Supreme Court of Canada, counsel for the Roman Catholic minority of Her Majesty's subjects in the province of Manitoba, and counsel for the province of Manitoba appeared before the Supreme Court, as did also the Solicitor General for Canada, who appeared to submit the case on behalf of Her Majesty's Crown: that the counsel for the province of Manitoba not desiring to be heard, the Supreme Court pursuant to section 4 of the Act of 1891, hereinbefore referred to requested counsel to argue the case in the interest of the said province, and counsel thereupon appeared and argued the case for the said province as did also counsel for the Roman Catholic minority as aforesaid. That the case came on for argument before five judges of the Supreme Court, who on the 20th February, 1894, delivered their opinions thereon in the manner provided by the statutes: That in the result the opinions of the judges of the Supreme Court showed a majority of three judges out of five for a negative answer to all the six questions submitted for the opinion of the Supreme Court: That the Roman Catholic minority feeling aggrieved by the said opinions, presented a petition to Her Majesty in Council, praying for special leave to appeal therefrom to Her Majesty in Council and Her Majesty's Order in Council of the 27th June, 1894, leave to appeal was granted accordingly.

That such appeal to Her Majesty in Council was duly perfected, and was heard before the Judicial Committee of Her Majesty's Privy Council on 11th, 12th and 13th days of December, 1894, counsel being then heard both on behalf of the appellants and the province of Manitoba, and on the 29th day of January following, the lords of the Judicial Committee delivered judgment allowing the appeal, and reversing the opinion of the Supreme Court of Canada, their lordships stating that they were unable to see how the question as to whether a right or privilege which the Roman Catholic minority pre-



viously enjoyed had been affected by the legislation of 1890, could receive any but an affirmative answer, and added :

"Contrast the position of the Roman Catholics prior and subsequent to the Acts from which they appeal. Before these passed into law, there existed denominational schools of which the control and management were in the hands of Roman Catholics, who could select the books to be used and determine the character of the religious teachings. These schools received their proportionate share of the money contributed for school purposes out of the general taxation of the province, and the money raised for those purposes by local assessment was, so far as it fell upon Catholics, applied only towards the support of Catholic schools. What is the position of the Roman Catholic minority under the Acts of 1890? Schools of their own denomination, conducted according to their views, will receive no aid from the state. They must depend entirely for their support upon the contributions of the Roman Catholic community, while the taxes out of which state aid is granted to the schools provided for by the statute, fall alike on Catholics and Protestants. Moreover, while Catholic inhabitants remain liable to local assessment for school purposes, the proceeds of that assessment are no longer destined to any extent for the support of Catholic schools, but afford the means of maintaining schools, which they regard as no more suitable for the education of Catholic children, than if they were distinctly Protestant in their character.

"In view of this comparison, it does not seem possible to say that the rights and privileges of the Roman Catholic minority in relation to education which existed prior to 1890, have not been affected."

Their lordships also stated :—

"As a matter of fact the objection of Roman Catholics to schools such as alone receive state aid under the Act of 1890, is conscientious and deeply rooted. If this had not been so, if there had been a system of public education acceptable to Catholics and Protestants alike, the elaborate enactments which have been the subject of so much controversy and consideration, would have been unnecessary. It is notorious that there were acute differences of opinion between Catholics and Protestants on the education question prior to 1870. This is recognized and emphasized in almost every line of those enactments. There is no doubt either what the points of difference were, and it is in the light of these that the 22nd section of 'The Manitoba Act' of 1870, which was in truth a parliamentary compact, must be read."

And in conclusion their lordships added :—

"For the reasons which have been given, their lordships are of opinion that the 2nd subsection of section 22 of 'The Manitoba Act' is the governing enactment, and that appeal to the Governor General in Council was admissible by virtue of that enactment, on the ground set forth in the memorials and petitions, inasmuch as the Acts of 1890 affected rights or privileges of the Roman Catholic minority in relation to education within the meaning of that subsection. The further question is submitted whether the Governor General in Council has power to make the declarations or remedial orders asked for in the memorials or petitions, or has any other jurisdiction in the premises. Their lordships have decided that the Governor General in Council has jurisdiction, and that the appeal is well founded, but the particular course to be pursued must be determined by the authorities, to whom it has been committed by the statute. It is not for this tribunal to intimate the precise steps to be taken. Their general character is sufficiently defined by the 3rd subsection of section 22 of 'The Manitoba Act.'

"It is certainly not essential that the statutes repealed by the Act of 1890 should be re-enacted, or that the precise provisions of these statutes should again be made law. The system of education embodied in the Acts of 1890 no doubt commends itself, to and adequately supplies the wants of the great majority of the inhabitants of the province. All legitimate ground of complaint would be removed if that system were supplemented by provisions, which would remove the grievance upon which the appeal is founded, and were modified so far as might be necessary to give effect to these provisions."

The Lords of the Committee thereupon reported to Her Majesty that the said questions hereinbefore set forth ought to be answered as follows :—

1. "In answer to the first question : That the appeal referred to in the said memorials and petitions and asserted thereby, is such an appeal as is admissible under subsection 2 of section 22 of 'The Manitoba Act,' 33 Victoria (1870) chapter 3, Canada.

2. "In answer to the second question : That grounds are set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsection of 'The Manitoba Act' above referred to.

3. "In answer to the third question : That the decision of the Judicial Committee of the Privy Council in the cases of *Barrett vs. The City of Winnipeg* and *Logan vs. The City of Winnipeg*, does not dispose of or conclude the application for redress, based on the contention that the rights of the Roman Catholic minority, which accrued to them after the union under the statutes of the province, have been interfered with by the two statutes of 1890, complained of in the said petition and memorials.

4. "In answer to the fourth question : That subsection 3 of section 93 of 'The British North American Act 1867,' did not apply to Manitoba.

5. "In answer to the fifth question : That the Governor General in Council has jurisdiction and the appeal is well founded, but that the particular course to be pursued must be determined by the authorities to whom it has been committed by the statute ; that the general character of the steps to be taken is sufficiently defined by subsection 3 of section 22 of 'The Manitoba Act' of 1870.

6. "In answer to the sixth question : That the Acts of Manitoba relating to education passed prior to the session of 1890, did confer on the minority a right or privilege in relation to education within the meaning of subsection 2 of section 22 of 'The Manitoba Act' which alone applies ; that the two Acts of 1890 complained of did affect a right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council."

And Her Majesty at the court at Osborne House in the Isle of Wight, on the 2nd day of February, 1895, after taking the said report into consideration was pleased, by and with the advice of Her Majesty's Privy Council to approve of the said report of the Lords of the Committee, and to order that the "recommendation and directions therein contained be punctually observed, obeyed and carried into effect in each and every particular, whereof the Governor General of the Dominion of Canada for the time being and all other persons whom it may concern, are required to take notice and govern themselves accordingly."

That, after the determination of the said questions by Her Majesty in Council, as aforesaid, the said appeal of the Roman Catholic minority of Her Majesty's subjects in Manitoba from the two statutes of the legislature of the province of Manitoba hereinbefore mentioned came on for further hearing before your Excellency in Council on the 26th day of February, and the 5th, 6th and 7th days of March, 1895, in the presence of counsel both for the Roman Catholic minority of Her Majesty's subjects in the province of Manitoba and for the said province : and the committee having heard and considered what was alleged by counsel on both sides as well as the judgment of their lordships of the Judicial Committee of the Privy Council is of opinion that effect should be given to the said appeal, and that the said appeal should be allowed, in so far as it relates to rights acquired by the said Roman Catholic minority under legislation of the province of Manitoba, passed subsequently to the union of the province with the Dominion of Canada.

The committee therefore recommend that the said appeal be allowed, and that your Excellency in Council do adjudge and decide that, by the two Acts passed the legislature of the province of Manitoba on the 1st day of May, 1890, intituled respectively "An Act respecting the Department of Education," and "An Act respecting the Public Schools," the rights or privileges of the Roman Catholic minority of the said province in relation to education, prior to the 1st day of May, 1890, have been affected, by depriving the Roman Catholic minority of the following rights and privileges, which previous to and until the 1st day of May, 1890, such minority had, viz. :

(a.) The right to build, maintain, equip, manage, conduct and support Roman Catholic schools in the manner provided for by the said statutes, which were repealed by the two Acts of 1890 aforesaid.

(b.) The right to share proportionately in any grant made out of the public funds for the purposes of education.

(c.) The right of exemption of such Roman Catholics as contribute to Roman Catholic schools, from all payment or contribution to the support of any other schools.

And the committee also recommended that your Excellency in Council do further declare and decide that for the due execution of the provisions of section 22 of "The Manitoba Act," it seems requisite that the system of education embodied in the two Acts of 1890 aforesaid should be supplemented by a Provincial Act or Acts which would restore to the Roman Catholic minority the said rights and privileges, of which such minority has been so deprived as aforesaid, and which would modify the said Acts of 1890 so far, and so far only, as may be necessary to give effect to the provisions restoring the rights and privileges in paragraphs (a), (b) and (c) herein before mentioned.

The committee desire to add that: Their lordships of the Judicial Committee state in their judgment:—

"Bearing in mind the circumstances which existed in 1870, it does not appear to their lordships an extravagant notion, that in creating a legislature for the province with limited powers, it should have been thought expedient in case either Catholics or Protestants became predominate, and rights which had come into existence under different circumstances were interfered with, to give the Dominion Parliament power to legislate upon matters of education, so far as was necessary to protect the Protestant or Catholic minority as the case might be."

In the opinion of the committee, "The Manitoba Act" as construed with regard to the present case by the Judicial Committee of Her Majesty's Privy Council, so clearly points to a duty devolving upon your Excellency in Council, that no course is open consistent with both the letter and the spirit of the constitution, other than that recommended. To dismiss this appeal would be, not only to deny to the Roman Catholic minority rights substantially guaranteed to them under the constitution of Canada, but in truth such a course might involve the declaration on the part of your Excellency in Council that this provision of the constitution for the protection of the rights of certain of Her Majesty's subjects in Manitoba should not, in any case, be acted upon; and further, the committee do not perceive upon what principle, consistently with a declaration that effect is to be given to this appeal, the Protestant or Roman Catholic minority in Quebec or Ontario could invoke the corresponding provision of section 93 of "The British North America Act," in case of any Provincial Act or decision affecting their rights or privileges.

If your Excellency should see fit to approve of the foregoing recommendation, the Committee desire to state that it follows, that refusal or neglect on the part of the legislature of Manitoba to enact remedial legislation which to your Excellency in Council seems requisite, will confer upon parliament authority to pass such a law. In this connection, it was urged by counsel on behalf of the province that, should parliament legislate under these circumstances, its enactment would be absolute and irrevocable, so far as both parliament and the provincial legislature are concerned.

The committee, without necessarily adopting this view, observe that section 22 of "The Manitoba Act" may admit of that construction. The committee, therefore, recommend that the provincial legislature be requested to consider whether its action, upon the decision of your Excellency in Council, should be permitted to be such as while refusing to redress a grievance, which the highest court in the empire has declared to exist, may compel parliament to give the relief of which, under the constitution, the provincial legislature is the proper and primary source, thereby according to this view, permanently divesting itself in a very large measure of its authority, and so establishing in the province an educational system which no matter what changes may take place in the circumstances of the country, or the views of the people, cannot be altered or repealed by any legislative body in Canada.

The committee further, and for the reasons hereinbefore stated, recommend that if your Excellency in Council should be pleased to approve of this report, your Excellency in Council do make an order in the premises in the form and to the effect as set forth hereunto submitted, and that a certified copy of this minute and of the said order be



transmitted to his Honour the Lieutenant-Governor of Manitoba for his information, and that of his government and provincial legislature, also that a certified copy of this minute of the said order be transmitted to Mr. Ewart, Q.C., of Winnipeg, as representing the Roman Catholic minority of Her Majesty's subjects in Manitoba.

All of which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE.

*Clerk of the Queen's Privy Council for Canada.*

## ABERDEEN.

Privy

L. S.

Seal.

AT THE GOVERNMENT HOUSE AT OTTAWA,  
THURSDAY, the 21st day of March, 1895.

*Present :*

HIS EXCELLENCY THE GOVERNOR GENERAL.

The Honourable Sir Mackenzie Bowell.  
Sir Adolphe P. Caron.  
John Costigan.  
George E. Foster.  
Sir Charles Hibbert Tupper.  
John Haggart.

The Honourable J. A. Ouimet.  
T. Mayne Daly.  
A. R. Angers.  
W. B. Ives,  
A. R. Dickey.  
W. H. Montague.

In Council.

Whereas, on the 26th day of November, 1892, a petition by way of appeal under the provision of section 22 of chapter 3 of the Acts of the Parliament of Canada, passed in the 33rd year of Her Majesty's reign, and intituled, "An Act to amend and continue the Act 32-33 Victoria, chapter 3, and to establish and provide for the Government of the province of Manitoba (commonly called 'The Manitoba Act') and confirmed by 'The British North America Act, 1871,'" was presented to his Excellency the Governor-General of Canada in Council, by and on behalf of the Roman Catholic minority of Her Majesty's subjects, in the province of Manitoba, which petition, among other things, alleged, in effect that by certain Acts of the legislature of the province of Manitoba, passed after the union, and by an Act passed by the said legislature in the 44th year of Her Majesty's reign, chapter 4, which may be cited as "The Manitoba School Act," and by the Acts amending the same, the Roman Catholic minority of Her Majesty's subjects in Manitoba acquired the rights and privileges in relation to education, thereby conferred upon them, including the right to build, maintain, equip, manage, conduct and support Roman Catholic schools in the manner provided by the said statutes, the right to a proportionate share of any grant made out of the public funds for the purposes of education, and the right of exemption of such members of the Roman Catholic Church, as contribute to such Roman Catholic schools, from all payments or contributions to the support of any other schools.

That subsequently, in the 53rd year of Her Majesty's reign, two statutes were passed by the legislature of the province of Manitoba, relating to education, which statutes came into force on the first day of May, 1890, and are intituled respectively "An Act respecting the Department of Education," and "An Act respecting Public Schools," and that the effect of the two last named statutes was to repeal the previous Acts of the province of Manitoba in relation to education, and to deprive the Roman Catholic minority of the rights and privileges which it had acquired under such previous statutes; and by the said petition, the said Roman Catholic minority prayed among other things:—

That it might be declared that the said last mentioned Acts did affect the rights and privileges of the said Roman Catholic minority of the Queen's subjects in relation to education:—

That it might be declared that to his Excellency the Governor General in Council, it seems requisite that the provisions of the statutes in force in the province of Manitoba, prior to the passage of the said Acts, should be re-enacted in so far, at least, as may be necessary to secure to the Roman Catholics in the said province, the right to build, maintain, equip, manage, conduct, and support their schools in the manner provided for by said statutes, to secure to them their proportionate share of any grant made out of the public funds for the purposes of education, and to relieve such members of the Roman Catholic Church, as contribute to such Roman Catholic schools, from all payment or contribution to the support of any other schools; or that the said Acts of 1890, should be so modified or amended as to effect such purposes:—

And that such further or other declaration or order might be made as to his Excellency the Governor General in Council should, under the circumstances, seem proper, and that such directions might be given, provisions made, and all things done in the premises, for the purpose of affording relief to the said Roman Catholic minority in the province, as to His Excellency in Council might seem meet.

And whereas the 26th day of February, 1895, having been appointed for the hearing of the said appeal, and the same coming on to be heard on that day, and on the 5th, 6th and 7th days of March, 1895, in the presence of counsel for the petitioners (the said Roman Catholic minority of Her Majesty's subjects in the province of Manitoba) and as well for the province of Manitoba, upon reading the said petition and the statutes therein referred to and upon hearing what was alleged by counsel on both sides, his Excellency the Governor General in Council was pleased to order and adjudge, and it is hereby ordered and adjudged, that the said appeal be, and the same is hereby allowed, in so far as it relates to rights acquired by the said Roman Catholic minority under legislation of the province of Manitoba, passed subsequent to the union of that province with the Dominion of Canada, and his Excellency the Governor General in Council was pleased to adjudge and declare, and it is hereby adjudged and declared that by the two Acts passed by the legislature of the province of Manitoba, on the first day of May, 1890, intituled respectively "An Act respecting the Department of Education," and "An Act respecting Public Schools," the rights and privileges of the Roman Catholic minority of the said province, in relation to education, prior to the 1st day of May, 1890, have been affected by depriving the Roman Catholic minority of the following rights and privileges, which, previous to and until the first day of May, 1890, such minority had, viz.:—

(a) The right to build, maintain, equip, manage, conduct and support Roman Catholic schools, in the manner provided for by the said statutes which were repealed by the two Acts of 1890 aforesaid.

(b) The right to share proportionately in any grant made out of the public funds for the purposes of education.

(c) The right of exemption of such Roman Catholics, as contribute to Roman Catholic schools, from all payment or contribution to the support of any other schools.

And his Excellency the Governor General in Council was further pleased to declare and decide, and it is hereby declared that it seems requisite that the system of education embodied in the two Acts of 1890, aforesaid, shall be supplemented by a provincial Act or Acts which will restore to the Roman Catholic minority the said rights and privileges of which such minority has been so deprived as aforesaid, and which will modify the said Acts of 1890, so far and so far only as may be necessary to give effect to the provisions restoring the rights and privileges in paragraphs (a), (b), (c), hereinbefore mentioned.

Whereof the Lieutenant Governor of the province of Manitoba for the time being, and the legislature of the said province, and all persons whom it may concern, are to take notice and govern themselves accordingly.

JOHN J. MCGEE,  
*Clerk of the Queen's Privy Council for Canada.*

*Address of Legislative Assembly of Manitoba in reply to the Remedial Order in Council.*

*To His Honour the Honourable Sir John Christian Schultz, K.C.M.G., Lieutenant Governor of Manitoba.*

MAY IT PLEASE YOUR HONOUR:

We, Her Majesty's dutiful and loyal subjects, the legislative assembly of Manitoba, in legislature assembled, beg to present to your honour, for transmission to his Excellency the Governor General in Council, the memorial adopted by the legislature of Manitoba on the 19th day of June last, in reply to the remedial order accompanying your honour's message dated the 25th day of March, 1895.

FINLAY M. YOUNG, *Speaker.*

*To His Excellency the Governor General of Canada in Council:*

The memorial of the legislative assembly of the province of Manitoba humbly sheweth:—We have received through his honour the Lieutenant Governor the order which your Excellency in Council was pleased to make upon the twenty-first day of March, 1895, after hearing the appeal of the Roman Catholic minority of this province, which order is in the words following:—

*(Here follows copy of Order in Council of 21st March, 1895.)*

The privileges which by the said order we are commanded to restore to our Roman Catholic fellow-citizens are substantially the same privileges which they enjoyed previously to the year 1890. Compliance with the terms of the order would restore Catholic separate schools, with no more satisfactory guarantees for their efficiency than existed prior to the said date.

The educational policy embodied in our present statutes was adopted after an examination of the results of the policy theretofore followed under which the separate Roman Catholic schools (now sought to be restored) had existed for a period of upwards of 19 years. The said schools were found to be inefficient. As conducted under the Roman Catholic section of the board of education they did not possess the attributes of efficient modern public schools. Their conduct, management and regulation were defective; as a result of leaving a large section of the population with no better means of education than was thus supplied, many people grew up in a state of illiteracy. So far as we are aware there has never been an attempt made to defend these schools on their merits, and we do not know of any ground upon which the expenditure of public money in their support could be justified.

We are therefore compelled to respectfully state to your Excellency in Council that we cannot accept the responsibility of carrying into effect the terms of the remedial order.

Objections upon principle may be taken to any modification of our educational statutes which would result in the establishment of more sets of separate schools. Apart, however, from the objections upon principle, there are serious objections from a practical educational standpoint. Some of these objections may be briefly indicated:

We labour under great difficulties in maintaining an efficient system of primary education. The school taxes bear heavily upon our people. The large amount of land which is free from school taxes and the great extent of country over which our small population is scattered present obstacles to efficiency and progress.

The reforms effected in 1890 have given a strong impetus to educational work, but the difficulties which are inherent in our circumstances have constantly to be met. It will be obvious that the establishment of a set of Roman Catholic schools, followed by a set of Anglican schools and possibly Mennonite, Icelandic and other schools, would so impair our present system that any approach to even our present general standard of efficiency would be quite impossible. We contemplate the inauguration of such a state



of affairs with very grave apprehension. We have no hesitation in saying that there cannot be suggested any measure which, to our minds, would more seriously imperil the development of our province.

We believe that when the remedial order was made, there was not available then to your Excellency in Council full and accurate information as to the working of our former system of schools.

We also believe that there was lacking the means of forming a correct judgment as to the effect upon the province of changes in the direction indicated in the order.

Being impressed with this view, we respectfully submit that it is not yet too late to make a full and deliberate investigation of the whole subject. Should such a course be adopted, we shall cheerfully assist in affording the most complete information available. An investigation of such a kind would furnish a substantial basis of fact upon which conclusions could be formed with a reasonable degree of certainty.

It is urged most strongly that upon so important a matter, involving, as it does, the religious feelings and convictions of different classes of the people of Canada and the educational interests of a province which is expected to become one of the most important in the Dominion, no hasty action should be taken, but that, on the contrary, the greatest care and deliberation should be exercised and a full and thorough investigation made.

While we do not think it proper to enter upon a legal argument in this memorial, we deem it our duty to briefly call attention to some of the legal and constitutional difficulties which surround the case. It is held by some authorities that any action taken by the Parliament of Canada upon the subject will be irrevocable. While this opinion may or may not be held to be sound, it is in our judgment only necessary to point out that there are substantial grounds for entertaining such an opinion, in order to emphasize the necessity for acquiring a most ample knowledge of the facts before any suggestion of parliamentary action is made.

It will be admitted that the two essentials of any effective and substantial restoration of Roman Catholic privileges are :

1. The right to levy school taxes ;
2. The right to participate in the legislative school grant : without these privileges the separate schools cannot be properly carried on, and without them therefore, any professed restoration of privileges would be illusory.

It may be held that the power to collect taxes for school purposes conferred upon school boards of our former educational statutes was conferred by virtue of the provisions of subsection (2) of section 92 of the British North America Act, and not by virtue of the provisions of section 22 of the Manitoba Act. If this view be well founded, then that portion of the Act of 1890 which abolished the said right to collect taxes is not subject to appeal to your Excellency in Council, and the remedial order and any subsequent legislative act of the Parliament of Canada (in so far as they may purport to restore the said right) will be *ultra vires*.

As to the legislative grant we hold that it is entirely within the control of the legislature of the province that no part of the public funds of the province could be made available for the support of separate schools without the voluntary action of the legislature. It would appear, therefore, that any action of the Parliament of Canada looking to the restoration of Roman Catholic privileges must, to be of real and substantial benefit, be supplemented by the voluntary action of the provincial legislature.

If this be the case, nothing could be more unfortunate from the standpoint of the Roman Catholic people themselves, than any hasty or peremptory action on the part of the Parliament of Canada, because such action would probably produce strained relations and tend to prevent the possibility of restoring harmony.

We respectfully suggest to your Excellency in Council that all of the above considerations call most strongly for full and careful deliberation, and for such a course of action as will avoid irritating complications.

We deem it proper also to call attention to the fact that it is only a few months since the latest decision upon the subject was given by the Judicial Committee of the

Privy Council. Previously to that time a majority of the members of the Legislative Assembly of Manitoba had either expressly or impliedly given pledges to their constituents which they feel in honour bound loyally to fulfil.

We understand that it has been lately suggested that private funds of the Roman Catholic Church and people had been invested in school buildings and land that are now appropriated for public school purposes. No evidence of such fact has ever been laid before us, so far as we can ascertain, but we profess ourselves willing if any such injustice can be established, to make full and fair compensation therefor.

In conclusion we beg respectfully to place on record our continued loyalty to Her Gracious Majesty, and to the laws which the Parliament of Great Britain has in its wisdom seen fit to enact for the good government of Canada.

FINLAY M. YOUNG,  
*Speaker.*

Legislative Assembly,  
Winnipeg, 19th June, 1895.

## MANITOBA—54TH VICTORIA, 1891.

4TH SESSION, 7TH LEGISLATURE.

*His Honour the Lieutenant Governor to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, WINNIPEG, 18th April, 1891.

SIR,—I have the honour to inform you that on the 18th instant, before proroguing the fourth session of the seventh legislature of the province of Manitoba, I reserved for the signification of the pleasure of his Excellency the Governor General the following bill passed during the session referred to:—

No. 8, 'An Act to authorize companies, institutions or corporations incorporated out of this province, to transact business therein.'

The certified copy of this bill, received to-day, I herewith inclose, and have the honour to submit for his Excellency's consideration the following:—

1. That a comparison of the inclosed bill (No. 3,) with chapter 23 of 53 Victoria, to which objection was taken by the honourable the Minister of Justice in his report of 31st March, 1891, to his Excellency the Governor General in Council, as given in your despatch, of date 6th instant, will show that the bill No. 38, inclosed, is a virtual re-enactment of cap. 23, 53 Vic., proclamation of the disallowance of which Act was made by his Excellency the Governor General in Council on the fourth day of the present month, conveyed to me by message to the legislative assembly of this province on the sixth instant and communicated to my government with a copy of despatch of the 6th instant from the honourable the Secretary of State, together with a copy of the report of the honourable the Minister of Justice dated 31st March, 1891, and the order of his Excellency the Governor General in Council of the 4th instant, on the 10th instant.

2. That while some minor alterations affecting church property were made in the bill (No. 38,) yet it seemed to me that nearly all the clauses declared to be objectionable in the report of the honourable the Minister of Justice, recommending the disallowance of the Act (cap. 23 of 53 Vic.), were re-enacted in the inclosed bill, and that moreover sec. 4 of cap. 11, 49 Vic., ("No company, corporation or other institution not incorporated under the provisions of the statutes of this province shall be capable of taking, holding or acquiring any real estate within this province unless under license from the Lieutenant-Governor in Council under any statute of this province in that behalf") to which reference was made in the report of the Minister of Justice, remained unrepealed in the inclosed or in any other bill passed during the present session (1891).

3. That though my assent to the inclosed bill, although seeming to disregard of the action of his Excellency the Governor General in Council, based upon the report and recommendation of the honourable the Minister of Justice, might have been given, leaving it again to be dealt with by his Excellency in Council, if the bill had been passed in the winter, when its conditions did not so much affect immigration and other interests, yet having regard to the peculiar conditions obtaining in this province at the present time, viz.

(a.) The present and succeeding month are special seasons of immigration, because they admit in many cases of the immediate planting of root and other crops, even upon lands just homesteaded.

(b.) A considerable number of immigrants from the arid districts to the south and south-west of this province and from other foreign countries are about to come, and indeed are now coming, to this province.

(c.) The greater number of the first-named immigrants, although skilled agriculturists, have been ruined by successive droughts; and, apart from its other advantages have been induced to come to this part of Canada by the loans they expect at once to



receive from the loan companies (affected by the bill in question) on the security of their homesteads and other lands.

(d.) While such assistance is calculated to make them successful settlers Here, and so promote a rapid increase of such immigration, yet without it they would be simply stranded upon the homesteads they occupy.

(e.) Any legislation calculated to create a feeling of insecurity among such corporations, would seriously impair the immigration prospects of the province by causing the restriction or entire refusal of such loans, as well as of loans for the extension and improvement of the property of settlers already here.

I therefore reserved the bill No. 38 (herewith transmitted), for the signification of the pleasure of his Excellency the Governor General thereupon.

I have, &c.,

JOHN SCHULTZ,  
*Lieutenant Governor.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 21st April 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th April 1892.

*To His Excellency the Governor in Council :*

The undersigned has the honour to report on the statutes passed by the legislature of the province of Manitoba in the year 1891, chapters 1 to 27, 29 to 32, 34 to 37, and he respectfully recommends that the same be left to their operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

NOTE—Chap. 28 does not appear to have been reported upon.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 21st April 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th April, 1892.

*To His Excellency the Governor in Council.*

The undersigned has the honour to represent that by a report bearing even date with this he has recommended that an Act, cap. 25 passed by the legislative assembly of the province of Manitoba, on the 18th of April, 1891, intituled—"An Act respecting the Revised Statutes of Manitoba" be left to its operation. That Act recites in effect that a commission had been appointed, empowering certain commissioners to revise and consolidate the statute law of that province :—and that the commissioners had reported such revision and consolidation, marking the same with a letter "A." The statute thereupon proceeded to enact that the commissioners might incorporate in such consolidation the legislation of the session of 1891, and what thereupon the Lieutenant Governor in Council might cause a correct printed roll thereof duly authenticated to be deposited in the office of the clerk of the legislative assembly, and that after such deposit the Lieutenant Governor in Council might by proclamation declare the time on, from and after which the same should come into force, and have effect as law by the designation of "The Revised Statutes of Manitoba." The undersigned further represents that a certified copy of the statute was received by the honourable the secretary of state on the 22nd day of April, 1891, and that under the provisions of "The British North America Act," the time for the disallowance of the same will expire on the 22nd of April, instant. Up to the present time neither your Excellency nor any department

of the government of Canada has been furnished with a copy of the consolidation above referred to, although the undersigned is informed, and he has no doubt as to the fact, that everything has now been done that is necessary to enable the issue of the proclamation bringing the revision into force.

The undersigned is of opinion that in the absence of any understanding or convention with a provincial government in respect thereto, Acts of this character, providing for the bringing into force by proclamation of revised or consolidated statutes, they should not be allowed to go into operation until your Excellency has had an opportunity of examining the contents of the consolidation to which they relate. In this particular case he would have recommended its disallowance had it not been that in pursuance of a suggestion which he took the liberty of giving to the honourable the attorney general of the province of Manitoba, the Act was repealed during the session of the legislature which was closed on the day of the date of this report; and the undersigned was given to understand that there will be ample opportunity given for the proper examination of the contents of the consolidation in question, before it becomes law.

The undersigned submits foregoing facts for the information of your Excellency.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 21st April, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th April, 1892.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts of the province of Manitoba, passed in the year 1891, (a copy of which Act was received by the Honourable the Secretary of State on the 22nd day of April, 1891).

Cap. 33, "An Act to incorporate the Norwood Bridge Company."

This Act incorporates a company for the purpose of constructing and maintaining a bridge across the Red River between the city of Winnipeg and the town of St. Boniface. By section 14 the company is authorized to erect, make and sink such piers, abutments, blocks and erections in the Red River, as may be deemed necessary for the construction of the bridge, and for its protection against ice and freshets.

Clause 20 directs that the bridge be provided with draws, or springs, so constructed as to allow for the passage of steam boats and other vessels, and section 16 provides that the company shall not commence operations until the plans of the bridge and its site have been submitted to, and approved of, by your Excellency in Council.

In so far as this Act purports to give corporate functions to the promoters it is within the powers of the legislative assembly. In so far, however, as it seeks to authorize the construction of a bridge over the Red River, a river which is, without question, a navigable river, it is beyond the competency of such legislature. Inasmuch, however, as the corporation cannot, irrespective of its charter, legally interfere with the free navigation of the river, unless and until it has obtained the necessary authority therefor, from the parliament of Canada, or under the provisions of Canadian statutory law, and having in view also the fact that by the terms of the Act itself, no work can be performed, until your Excellency in Council has first approved of the same, there does not appear to be any necessity for the exercise of the power of disallowance in this particular case. The undersigned, therefore, recommends that it be left to its operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## MANITOBA—55TH VICTORIA, 1892.

5TH SESSION, 7TH LEGISLATURE.

*Report of the Hon. the Acting Minister of Justice, approved by His Excellency the Governor General in Council, on the 25th April, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th April, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Manitoba in the 55th year of Her Majesty's reign (1892), received by the Secretary of State on the 25th April, 1892, chapters 1 to 58, and he is of opinion that they are unobjectionable and may be left to their operation.

Respectfully submitted,

T. MAYNE DALY,  
*Acting Minister of Justice.*

## MANITOBA—56TH VICTORIA, 1893.

1ST SESSION, 8TH LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 13th February, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th January, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Manitoba, passed in the 56th year of Her Majesty's reign (1893), chapters 1 to 44, 48 to 50, received by the Secretary of State on the 17th March, 1893, and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts have been reserved for a separate report.

The undersigned also recommends that if this report be approved, a copy of the same, with a copy of the schedule be sent to the Lieutenant-Governor of the province for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 10th day of February, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 16th January, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts passed by the legislature of the province of Manitoba in the 56th year of Her Majesty's reign, 1893, received by the Secretary of State on the 17th March, 1893, as follows :—



Chapter 45. "An Act to incorporate the Melita Northern Railway Company."

By this statute the company is empowered to construct a line of railway from a point on the international boundary line to Melita, and thence northerly to a point on the main line of the Canadian Pacific Railway.

Chapter 46. "An Act to amend 'An Act to incorporate the Miniota North Western Railway Company.'"

By this Act the company is empowered to continue its railway northerly through the municipality of Rossburn, east of the west branch of Birdtail Creek, until township 21 is reached, thence continuing northerly through that territory known as Gilbert Plains, to the northerly boundary of the province west of range 20.

Such legislation may in effect authorize the construction of lines of railway connecting two provinces or extending beyond the limits of the province, which it is not competent for a provincial legislature to do, but the question is one which may conveniently be left for judicial decision.

Chapter 47. "An Act to incorporate the Winnipeg Canal and Water Power Company."

This statute purports to empower the company to establish, construct and maintain a canal from any point on the western boundary of the Lake of the Woods, or any river or stream flowing into the same, to any point on the Red River within the province, or any river or stream flowing into the Red River, with all necessary locks, dams, tow paths, etc., and to select and purchase sites for such warehouse and other buildings and erections as may be considered expedient by the company: also to use any waters for the purpose of supplying the canal, and to make all such reservoirs, feeders, branches, aqueducts, tunnels and channels for the use of the canal, as the company shall consider necessary: also to take, use, occupy and hold so much of the beach or beach lands or banks of any waters, as may be required for the wharfs or other works of the company to be used in connection with the canal or waters therewith or adjacent thereto and for making an easy entrance thereto: also to acquire, construct, maintain and operate slides, booms, dams, conduits, pipes and other works of a like nature to render possible and facilitate the passage of logs in, upon or along the said canal or any waters connecting therewith or adjacent thereto, and for the purpose of creating and employing water power: also to alter or divert the course of any non-navigable waters connecting with or adjacent to the canal as well temporarily as permanently and to raise or sink the level of the same:

Such provisions, as well as other provisions contained in this Act, appear to be intended to empower the company to divert the waters and occupy the beds of rivers which are the property of Canada and, in that view, in the opinion of the undersigned, would be *ultra vires* of the provincial legislature. They may, however, be open to the construction that they merely confer power on the company to do such acts in the event of the company becoming possessed of the right to exercise such powers by some concession from the Dominion authority, and the undersigned does not, therefore, deem it advisable to recommend the disallowance of the statute.

The undersigned recommends that the several Acts mentioned in this report be left to their operation.

He further recommends that, if this report be approved, a copy of the same be sent to the Lieutenant Governor of the province of Manitoba for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

## MANITOBA—57TH VICTORIA, 1894.

2ND SESSION, 8TH LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 18th of October, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th October, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Manitoba in the 57th year of Her Majesty's reign (1894), chapters 1 to 27, 29 to 42, 44 to 46 and 48, received by the Secretary of State for Canada on the 6th day of March, 1894, and he is of opinion that they are unobjectionable and may be left to their operation.

Chapters 28, 43 and 47 have been reserved for a separate report.

The undersigned also recommends that if this report be approved a copy of the same, together with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 18th of October, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th October, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report upon the statutes of the province of Manitoba passed in the 57th year of Her Majesty's reign (1894), received by the Secretary of State for Canada on the 6th of March, 1894, as follows :—

Chapter 43. "An Act to incorporate the Manitoba Farming, Colonization and Water Company, Limited."

By section 12 of this Act it is enacted that any person found guilty of wilfully injuring or destroying the works, reservoirs, or any property immovable or moveable of the company, shall be liable to a penalty not less than five dollars nor more than twenty dollars for each such offence.

Chapter 47. "An Act to incorporate the Winnipeg Natural Gas and Petroleum Company."

By section 31 it is enacted that if any person wilfully and maliciously breaks down, damages, injures, puts out of order or destroys any main or pipe or other works or apparatus, or any matter or thing made or provided for the purposes aforesaid, or in anywise wilfully does any injury or damage, for the purpose of hindering or embarrassing the construction, completion, maintaining or repairing of the said works or procuring the same to be done, such person shall be liable to a penalty not exceeding twenty dollars and costs, or to be confined in the common jail for a period not exceeding three months.

It appears to the undersigned that such provisions as the foregoing belong to the subject of criminal law, and there are provisions in the Criminal Code relating to malicious injuries to property, under which, offences of the character mentioned could be punished. It was, therefore, in the opinion of the undersigned, *ultra vires* of the legislature of Manitoba to constitute such offences, or provide for their punishment.

The remaining sections of the two statutes under consideration are, however, not open to objection, and in the view of the undersigned the public interest would be served by leaving these statutes to their operation.

The undersigned observes that individuals affected by the sections referred to would have their remedy in the courts.

The undersigned, therefore, recommends that these statutes be left to their operation, and that a copy of this report, if approved, be sent to the Lieutenant Governor of the province for the information of his government.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Petition of His Eminence Cardinal Taschereau, the Archbishops and Bishops of the Roman Catholic Church in Canada on the subject of Education, and praying for disallowance of chapter 28.*

*To His Excellency the Governor General of Canada in Council :*

MAY IT PLEASE YOUR EXCELLENCY :

The petition of the undersigned, his Eminence the Cardinal Archbishop of Quebec, the most Reverend Archbishops, and the right Reverend the Bishops of the Roman Catholic Church in the Dominion of Canada, devoted subjects of Her Most Gracious Majesty the Queen, humbly sheweth :—

1. Since the establishment of the province of Manitoba until 1890, the public schools of the province, as established by law, were either Protestant or Catholic schools. They all enjoyed the same rights and received respectively their legitimate share of legislative grants. They were independent one from another, being conducted and directed and supported by the respective sections of the population for which they were established. The system gave such satisfaction that it was the cause of no complaint, and the two sections of the population, with their respective schools, lived in peace, concord, harmony and mutual good will.

2. In 1890 laws were passed changing the school system and replacing it by other enactments which are, for a portion of the community, a source of grief, regret and hardship. Practically, and in spite of all assertions to the contrary, the result of the new system is purely and simply the legal suppression of all Catholic schools and the maintenance of all Protestant schools, with all the rights and privileges they enjoyed previous to the school laws of 1890. Catholic schools are abolished by law, while Protestant schools have nothing to suffer from the new enactment; nay, they gain by it, as the Catholic ratepayers have now to help to the support of Protestant schools, which are exactly what they were, and to which, naturally, Catholic parents cannot conscientiously send their children.

3. The Public Schools Act of 1890, being 53 Vic., cap. 38, now cap. 127 of Revised Statutes of 1891, decrees in sections 241-242, that "in cases where, before the coming into force of this Act, Catholic school districts have been established, covering the same territory as any Protestant school district, such Catholic school districts shall cease to exist."

The law has been put into force wheresoever it could be applied, for instance, in Winnipeg, Brandon, &c. There the Catholic trustees have ceased to be recognized since the 1st of May, 1890, while the Protestant trustees remained in office, and caused taxes to be levied on Catholic as well as Protestant parents, notwithstanding the fact that no Catholic children are attending the said Protestant schools.

4. Section 192 says: "Religious exercises in the public schools shall be conducted according to the regulations of the advisory board." It is therefore lawful to have prayers and religious exercises in the public schools of Manitoba, provided the same are fixed and determined by the advisory board. Just now, all the members of the said



board are Protestants, and owing to the condition of country it is clear that Catholics will never have but very little influence, if any, in the said board.

Therefore Protestant children will be allowed to pray according to their parents' desire, while Catholic children are deprived of the same liberty, and this under the penalty of forfeiting their legitimate share of public money, because in order to secure to his or her school, the government grant, the teacher must declare under oath that no prayer nor religious exercise, except as prescribed by the advisory board, has been used in the school. Suppose a school attended exclusively by Catholic children, with a Catholic teacher the said school would be deprived of the legislative grant, should the teacher or the pupils cross themselves or make use of the "Hail Mary."

5. Religious instruction is not prohibited in the public schools of Manitoba; in that respect and under the heading of morals, the regulations framed under the old system by the Protestants section of the board, are retained under the new system; "Stories, memory, gems, sentiments in the school lessons, examination of motives, didactic talks, teaching the ten commandments, &c., are means to be employed. "All this of course is to be used from a Protestant point of view, so much so that the actual chairman of the advisory board, who had always been the chairman of the Protestant section of the board of education, and who is no less a personage than the Archbishop of Rupert's Land, declared before his synod, in 1893, that the above quoted privileges are not small things in themselves, but they are doubly important because they carry with them for the teacher a degree of liberty in his teaching, of what may come before the classes in their literature and otherwise," and his Grace adds: "The teachers who ignore these exercises can hardly be realizing their position as Christian men."

The liberty above mentioned is naturally for Protestants alone, because it is enacted that those public schools are "non-sectarian," that is to say, that no Catholic teaching can be permitted while facilities are afforded to zealous and intelligent Protestant teachers to impress upon their pupils their own religious convictions.

See Appendix A, pamphlet by Archbishop Taché, April, 1893, and Appendix B, Dr. J. R. Morrison's paper read before the Junior Liberal Conservative Association of St. John, N.B., 13th February, 1894.

6. For the last four years the Catholics of Manitoba have been subjected to the unfair and unjust treatment resulting from the change in the school laws in 1890. They asked in vain for relief; instead of a remedy, they have been made the victims of a fresh injustice in the new Manitoba law, 57 Vic., cap. 28, assented to on 2nd March, 1894.

The clause 151 of the Public School Act of 1890 reads as follows: "Any school not conducted according to all the provisions of this or any Act in force for the time being, or the regulations of the Department of Education or the advisory board, shall not be deemed a public school within the meaning of the law, and such schools shall not participate in the legislative grant."

To this provision, in force since 1890, has been added this year, the section 4 of the new law which reads as follows:—"Section 151 of chapter 127 is hereby amended by adding thereto the following words: nor the municipal grant, \* \* \* nor shall any school assessment be levied or school taxes be collected for the benefit of such schools."

The consequences of this new enactment, is that no municipality, even one exclusively Catholic, without a single Protestant in its limits, has any power to levy a single dollar for Catholic schools, while a Catholic municipality where there are ten Protestant children, is obliged by law, to levy on all the Catholics, as well as on the parents of ten Protestant children, the money required for the education of the said ten Protestant children.

7. The same law of 1894 goes further, and decrees the confiscation of all school property in all the districts which do not submit their schools to the new law, and it says in section 2:—"In every case in which the organization of a school district fails to be continued, the council of the municipality in which such school district lies, shall have full power and authority, and it shall be the duty of the said council to take charge of all the property of such school district, real and personal, and to administer the same for the benefit of the creditors of such school district, if any."

Such is the real position of the Catholics of Manitoba, though all their school property has been acquired with their own money, without any help from Protestant purse, or from public fund, and in Protestant municipalities the Catholic schools property, real or personal, goes to the benefit of Protestants.

8. The example given in Manitoba has been partly followed in the North-west Territories. There the Catholic separate schools have been retained, but, in virtue of the ordinance No. 22 A.D. 1892, they are deprived of their liberty of action, and of the character which distinguishes them from other schools. So that, in reality, the Catholics of the North-west are reduced, partly at least, to the hardships imposed upon their brethren of Manitoba. In both cases the result is very detrimental to the cause of education and really has in both cases, created bad feelings, dissensions, and the most deplorable results.

See Appendix C, memorial of Archbishop Taché, March, 1894.

9. The undersigned take the liberty to affirm that they deeply regret the condition of affairs above mentioned. The painful experience of the Catholics of Manitoba and of the North-west Territories, is also resented by all the Catholics of the Dominion. The undersigned have no hesitation in stating that a similar feeling certainly exists among many Protestants who, though separated by faith, are united with the Catholics in a sentiment of justice, fair play, and the desire of the prosperity of their common country.

The undersigned appreciate the political advantages enjoyed by Canada, and have no desire for any other regime, satisfied that there is, in the institutions of the country, and in the spirit of justice and conciliation which prevails among its inhabitants, a remedy against what, just now, is the subject of their complaints. The Canadian constitution acknowledges equal rights for all citizens and for all classes of citizens. Therefore, Canadians should not be oppressed, because they are Catholics.

10. The undersigned cannot shut their eyes to a fact closely connected with the history of their country, Catholic missionaries have not waited for the facilities and material advantages, now offered by Canada, to bring thereto the light of Christian civilization. On the contrary, they were the first pioneers of the sacred cause, and they sealed their missions with their blood. Without fear or hesitation they buried their existence among the most barbarous savages, whom they tamed and induced to peaceably hand over their own country to the Canadian authorities. The Catholic missionaries accomplished that noble task on the banks of the Saskatchewan and Red Rivers, as well as on those of the St. Lawrence, and the Ottawa, and they did this, when, alongside of the crosses they planted, they fondly rested their gaze on the fleur de lis flag.

Everyone knows that the same missionaries, while their eyes were yet moist with the tears they naturally shed, when they had to sever the ties by which their whole existence had hitherto been bound up, were as faithful to British dominion, as they had been to the banner of the land of their origin. It is well known that it is largely due to the fidelity of Canadian Catholic apostles, that England owes the quiet possession of the noble colony, which France had planted on the St. Lawrence and its tributaries. What then happened among the inhabitants of La Nouvelle France was possible, solely because its inhabitants were Catholics, and because England had respected their religious convictions. The knowledge of what they allude to, renders more incomprehensible to the undersigned the fact that the Catholics of Manitoba and of the North-west are badly treated because they are Catholics.

11. Catholics believe in the necessity of religious instruction in schools. This conviction imposes upon them conscientious obligations, and these obligations gave them rights of which they cannot be deprived. They cannot be satisfied by the saying:—Others do not believe as you do, therefore you must change your convictions; others are satisfied and even wish that their children should be brought up and educated in such and such a way: therefore, you Catholics, you cannot stand aside, or if you do, do so at your own expense. Such an argument is neither fair nor just.

The undersigned, pastors of souls, are at one with their flocks in insisting on the rights they claim, and they are fully determined to preserve them in their integrity.

There is in this a question of justice, of natural equity, of prudence and of social economy, closely connected with the fundamental interests of the country.

The Catholics, being under the obligations of educating their children according to their faith and the religious principles they profess, have, in our free country, the right of establishing their separate schools, and that right they must be allowed to exercise without being forced to the burden of double school taxes.

The undersigned also take the liberty to state that the federal parliament has endowed the schools of Manitoba and of the North-west with a large domain, in assigning to the support of such schools, the eighteenth part of all public lands. Those lands are Canadian property, and how could the Federal Parliament consent to deprive the Catholics of these countries, of their legitimate share in the profit derived from such lands, simply because this class of citizens adheres to its religious convictions, and wishes to comply with conscientious obligations?

See Appendix D, "A page of the history of the schools of Manitoba," by Archbishop Taché.

12. The undersigned petitioners are fully aware that Manitoba and the North-west Territories were received into Confederation, after promises, made to the first inhabitants of that vast country, in the name, and by the authority of Her Majesty. The immediate representative of our beloved Queen assured them, that "respect and attention would be extended to the different religious persuasions and that, on their union with Canada, all their civil and religious rights and privileges would be respected." In the estimation of Catholics, their religious rights are not respected, and their religious persuasions are not treated with respect and attention, when there are difficulties thrown, by law, in the way of securing to their children an education, conducted in accordance with their religious convictions.

13. The undersigned, while petitioning as they do, repudiate the idea of interference with political parties, or with the direction of affairs, purely political or temporal. Their sole object is to secure, for the Catholics, a protection, needed for the accomplishment of their religious obligations, and it is in that view and in that view only, that they petition his Excellency the Governor General in Council and ask the honourable members of the Senate and of the Commons of Canada, of whatsoever party they may be, to help in a fair settlement of the actual difficulties.

Therefore, your petitioners humbly pray his Excellency the Governor General in Council :

1. To disallow the Act of Manitoba 57 Vic. Ch. 28 (1894) and intituled "An Act to amend the Public School Act."

2. To give such directions, and make such provisions for the relief of the Roman Catholics of the province of Manitoba, as to his Excellency in Council may seem fit, with regard to the Manitoba School laws of 1890.

3. To communicate with the Lieutenant-Governor of the North-west Territories, in order that, by amending ordinances, redress should be given to meet the grievances of which the Catholics of the North-west complain on account of the Ordinance No. 22, assented to at Regina, on the 31st of December 1892.

And your petitioners, as in duty bound, will ever pray.

†E. A. CARDINAL TASCHEREAU, Archbishop of Quebec.

†ALEXANDER TACHÉ, Archbishop of St. Boniface, O.M.I.

†C. O'BRIEN, Archbishop of Halifax.

†EDWARD CHARLES, Archbishop of Montreal.

†J. THOMAS DUCHAMEL, Archbishop of Ottawa.

†JOHN WALSH, Archbishop of Toronto,

and 25 Bishops of R. C. Church.

Petitions praying for the disallowance of the Act in question, 47 Victoria (Man.), 1894, were also received from

1. J. Israel Tarte, M.P., and others, dated 15th October, 1894.

2. J. Alph. Pelletier, Ptre., and others, dated 10th January, 1896.



*Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 26th July, 1894.*

The Committee of the Privy Council have had under consideration a memorial addressed to your Excellency in Council by his Eminence Cardinal Taschereau, Archbishop of Quebec, and by the Roman Catholic archbishops and bishops in Canada on the subject of the laws relating to education in the province of Manitoba and in the North-west Territories.

The memorial sets forth the condition of the public schools in the province of Manitoba from the establishment of that province until 1890 and proceeds to state that ; "In 1890 laws were passed changing the school system and replacing it by other enactments which are, for a portion of the community, a source of grief, regret and hardship." The memorial asserts that : "The result of the new system is purely and simply the legal suppression of all Catholic schools and the maintenance of all Protestant schools, with all the rights and privileges they enjoyed previous to the school laws of 1890," and that the "Catholic ratepayers have now to help to the support of Protestant schools which are exactly what they were, and to which, naturally, Catholic parents cannot conscientiously send their children."

The memorial proceeds to state, in detail, some of the provisions of the enactments of Manitoba of 1890, which are claimed to have the effect previously stated.

It further states that "for the last four years the Catholics of Manitoba have been subjected to the unfair and unjust treatment resulting from the change in the school laws of 1890" ; that "They asked in vain for relief ; instead of a remedy they have been made the victims of a fresh injustice in the new Manitoba law, 57 Victoria, chapter 28, assented to on March 2nd, 1894," one of the provisions of which forbids aid be given by any municipality to any school not conducted according to the school system adopted in 1890. The effect of this enactment is stated by the memorialists to be "That no municipality, even one exclusively Catholic, without a single Protestant in its limits, has any power to levy a single dollar for Catholic schools, while a Catholic municipality where there are ten Protestant children is obliged by law to levy on all the Catholics, as well as on the parents of the ten Protestant children, the money required for the education of the ten Protestant children."

The memorial complains also that the enactment of 1894 "decrees the confiscation of all school property in all the districts which do not submit their schools to the new law "even though the school property may have been acquired by Catholics with their own money.

The memorial further states that in the North-west Territories, "The Catholic separate schools have been retained, but in virtue of the Ordinance number 22, of 1892, they are deprived of their liberty of action and of the character which distinguishes them from other schools," and that there, as well as in Manitoba, the result is very detrimental to the cause of education and really has, in both cases, created bad feelings, dissensions, and the most deplorable results." It adds that "The painful experience of the Catholics of Manitoba and of the North-west Territories is also resented by all the Catholics of the Dominion," and has excited sympathy "among many Protestants who, though separated by faith are united with the Catholics in a sentiment of justice and fair-play, and the desire of the prosperity of their common country."

The memorialists make reference to the many claims to gratitude which Catholic missionaries have established by their work in times past, in connection with Christian missions, and in spreading civilization as well as religion throughout what are now the British possessions in North America, and in encouraging sentiments of loyalty to British rule and British institutions when those possessions came under the British flag ; and they seem (properly in the view of the committee) to consider that these circumstances give a strong claim for generous recognition of the rights of Catholics in Manitoba and the North-west. They also refer to the fact : "That the federal parliament has endowed

the schools of Manitoba and the North-west with a large domain, in assigning to the support of such schools the eighteenth part of all public lands." They cite the promise made to the inhabitants of Manitoba and the North-west Territories when Rupert's Land was acquired by Canada, in the name and by the authority of Her Majesty, that "respect and attention would be extended to the different religious persuasions, and that on their union with Canada, all their civil and religious rights and privileges would be respected." The memorialists add that "In the estimation of Catholics their religious rights are not respected and their religious persuasions are not treated with respect and attention when these difficulties thrown, by law, in the way of securing to their children an education conducted in accordance with their religious convictions."

The memorialists "repudiate the idea of interference with political parties, or with the direction of affairs purely political or temporal." They state that "their sole object is to secure for Catholics a protection needed for the accomplishment of their religious obligations," and that "It is in that view, and in that view only, that they petition his Excellency the Governor General in Council and ask the honourable members of the Senate and of the Commons of Canada, of whatsoever party they may be, to help in a fair settlement of the actual difficulties;" and they pray:

*First*—For the disallowance of the Manitoba School Act of 1894.

*Second*—To give such directions and make such provisions for the relief of the Roman Catholics of the province of Manitoba as your Excellency in Council may see fit, with regard to the Manitoba School Laws of 1890.

*Third*—To communicate with the Lieutenant-Governor of the North-west Territories in order that, by amending ordinances, redress should be given to meet the grievances of which the Catholics of the North-west Territories complain on account of the Ordinance No. 22 of 1892.

The committee having taken all these matters into consideration, have the honour to recommend that a copy of the memorial above referred to, and also of this report, if approved, be transmitted to the Lieutenant-Governor of Manitoba, with a request that he will lay the same before his advisers and before the legislature of that province, and that copies of the same be also sent to the Lieutenant-Governor of the North-west Territories with the request that he will lay them before the executive committee of the Territories, and the legislature thereof.

The committee beg to observe to your Excellency that the statements which are contained in this memorial are matters of deep concern and solicitude in the interests of the Dominion at large, and that it is a matter of the utmost importance to the people of Canada that the laws which prevail in any portion of the Dominion should not be such as to occasion complaint of oppression or injustice to any class or portion of the people, but should be recognized as establishing perfect freedom and equality, especially in all matters relating to religion and religious belief and practice; and the committee therefore humbly advise that your Excellency may join with them in expressing the most earnest hope that the legislatures of Manitoba and of the North-west Territories respectively, may take into consideration at the earliest possible moment the complaints which are set forth in this petition, and which are said to create dissatisfaction among Roman Catholics, not only in Manitoba and the North-west Territories, but likewise throughout Canada, and may take speedy measures to give redress in all the matters in relation to which any well founded complaint or grievance be ascertained to exist.

The committee also advise that a copy of this report be sent to each of the memorialists.

All of which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,  
*Clerk of the Privy Council.*

*His Honour the Lieutenant-Governor of Manitoba to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, WINNIPEG, 26th October, 1894.

SIR,—Referring to your communication, of the 30th July inst., transmitting to me the copy of a memorial addressed to his Excellency the Governor General in Council by his Eminence Cardinal Tachereau, the archbishop of Quebec, and by the Roman Catholic archbishops and bishops in Canada, on the subject of the laws relating to education in the province of Manitoba and in the North-west Territories, and also the copy of an Order of his Excellency the Governor General in Council, approved by his Excellency on the 26th of July inst., in regard thereto, and requesting me to lay the memorial before my advisers and before the legislature of the province under my administration.

I beg to say that, having transmitted to my government a copy of your despatch, together with the memorial and order in council to which it refers, I am now requested by my government to inclose to you, herewith, for transmission to his Excellency, the Governor General in Council, a certified copy of order in council approving the report of the honourable my Attorney General, made after considering the subject of your communication, dated the 30th of July inst., and the inclosures to which reference is therein made.

I have, &c.

JOHN SCHULTZ,

*Lieutenant-Governor.*

*Copy of Order in Council approved by His Honour the Lieutenant-Governor of Manitoba.*

*To His Honour the Honourable John Christian Schultz, Lieutenant-Governor of the province of Manitoba.*

Report of a committee of the executive council on matters referred to their consideration.

PRESENT.

The Hon. Mr. Greenway,  
Mr. McMillan,  
Mr. Sifton,

Mr. Watson,  
Mr. Cameron,

ON MATTERS OF STATE.

May it please your Honour.

The honourable the Attorney General submits to council, the following report:—

That he has had under consideration the report of the committee of the honourable the Privy Council of Canada, approved by his Excellency on the 26th of July 1894.

The hope is expressed in the above mentioned document, that the legislatures of Manitoba, and the North-west Territories respectively, will take into consideration at the earliest possible moment, the matters which are complained of in the petition which is the subject of the report, and which are said to create dissatisfaction among Roman Catholics, not only in Manitoba and the North west Territories, but likewise throughout Canada, and may take speedy measures to give redress in all matters in relation to which, well founded complaint or grievance be ascertained. No intimation of a request preferred to the executive of the province of Manitoba is contained in the report, further than that it is ordered that a copy of the report be transmitted to the Lieutenant-Governor of Manitoba, with a request that he will lay the same before his advisers, and before the legislature of the province.



The school law is enacted by the legislature and the duty of the executive is to carry out its provisions. Educational legislation, however, is of such importance, as to be a matter of government policy, and it is therefore to be presumed that the above report has been forwarded to his Honour the Lieutenant-Governor, for transmission to his advisers, in order that the executive may declare its position upon the subject matter of the report.

That portion of the report which deals with educational matters in Manitoba, takes as its basis, certain statements of fact, contained in a Memorial addressed to his Excellency the Governor General in Council, by his Eminence, Cardinal Taschereau, the archbishop of Quebec, and by the other archbishops and bishops of the Roman Catholic Church in Canada.

The first statement of fact is as follows :—

In 1890 laws were passed changing the school system, and replacing it by other enactments, which are, for a portion of the community, a source of grief, regret and hardship. The result of the new system is, purely and simply, the legal suppression of all Catholic schools, and the maintenance of all Protestant schools, with the rights and privileges they enjoyed previous to the school laws of 1890. The Catholic ratepayers have now to help to support the Protestant schools, which are exactly what they were, and to which, naturally, Catholic parents cannot conscientiously send their children.

The second statement of fact is as follows :—

That for the last four years, the Catholics of Manitoba have been subjected to the unfair and unjust treatment resulting from the change in the school laws in 1890 ; that they have asked in vain for relief, and that instead of a remedy, they have been made the victims of a fresh injustice in the new Manitoba law, 57 Victoria, chapter 28, assented to on 2nd March, 1894, one of the provisions of which forbids aid to be given by any municipality, to any school not conducted according to the school system adopted in 1890.

The effect of this enactment is stated by the memorialists to be, that no municipality, even one exclusively Catholic without a single Protestant in its limits, has any power to levy a single dollar for Catholic schools, while a Catholic municipality, where there are ten Protestant children, is obliged by law to levy on all the Catholics, as well as on the parents of the ten Protestant children, the money required for the education of the ten Protestant children.

It is also stated that the Act of 1894 decrees the confiscation of all school property in all the districts which do not submit their schools to the new law, even although the school property may have been acquired by Catholics with their own money.

The true facts may be briefly stated as follows :—

Previously to the year 1890, there had been two sets of schools, Protestant and Catholic, and provision was made by law for their maintenance and government. The maintenance was effected by a special school rate, levied upon each district for its own purposes, a general municipal rate, levied by the municipality, and divided among the school districts in the municipality, and a grant from the government, which came out of the provincial treasury. In 1890 the above system was entirely changed, and a single set of schools was established. These schools are maintained by rates and grants as above set forth. They are non-sectarian public schools. The law makes no distinction between Catholics and Protestants, or between denominations of any kind.

It is true that Catholic people complain that they are not treated as they should be, but the ground of complaint has not been properly stated. It is said that an unfair distinction is made against Roman Catholics. As a matter of fact, no distinction has been made against any one. The Roman Catholics demand that they shall be singled out from the rest of the community, and that special class legislation shall be afforded to them as against all others. Our law is attacked because the legislature has refused to thus favour and distinguish them, as against other citizens. The ground of complaint, therefore, is not that an unfair distinction is made against Roman Catholics, but that the legislature declines to make an unfair distinction against others, in favour of Roman Catholics.

No citizen of the province has any justification in fact for claiming that he has not the same rights and the same privileges respecting education, that any other citizen possesses.

In addition to establishing the above principle in the public school legislation, of, and subsequent to the year 1890, it has been made the duty of every ratepayer to contribute to the support of the public schools.

The statement that the Catholic people are compelled to pay for the education of Protestant children is not ingenuous. Such a statement creates a false impression. The law is not responsible for any such effect. The correct statement of the fact is that all tax payers contribute to the education of all children, whose parents send them to the public schools. All taxable property is assessed for public school purposes, and all citizens have the same right to make use of public schools. The Catholic people have the same power to avail themselves of the advantage of the schools as the Protestant people. The religious exercises are non-sectarian, and are not used, except with the sanction and with the direction of the trustees, elected by all rate payers without distinction of creed. If a Catholic refuses to make advantage of the public school, and decides voluntarily to maintain another school, he is exercising his own judgment in the same way as any person who prefers to send his children to a private school, to the support of which he contributes. Neither of such persons, however, by so doing, gains any immunity from the payment of school rates.

As to the question of confiscation of school property, it is to be observed, that the same question was the subject of argument before the judicial committee of the Privy Council, in the case of *Barrett versus Winnipeg*, and that tribunal expressed the opinion that the Roman Catholics were somewhat better treated than the Protestant people, in regard to the disposition of school property under the Act of 1890. In so far as the Act of 1894 is concerned, there is no ground for the statement attributed to the memorial, that it decrees the confiscation of school property in the districts which had not submitted their schools to the new law. The Act of 1894 has reference to the distribution of grants of money raised by taxation upon all taxable property. It deals with the public school system, and in no way affects the ownership of any property of a school district, which does not submit to the Public School Act, and which is therefore not a public school.

The questions which are raised by the report now under consideration have been the subject of most voluminous discussion in the legislature of Manitoba during the past four years. All of the statements made in the memorial addressed to his Excellency the Governor General and many others, have been repeatedly made to, and considered by the legislature. That body has advisedly enacted educational legislation, which gives to every citizen equal rights and equal privileges, and makes no distinction respecting nationality and religion. After a harassing legal contest, the highest court in the British dominions had decided that the legislature, in enacting the law of 1890, was within its constitutional powers, and that the subject of education is one committed to the charge of the provincial legislature. Under these circumstances, the executive of the province see no reason for recommending the legislature to alter the principles of the legislation complained of. It has been made clear that there is no grievance, except it be a grievance that the legislature refuses to subsidize particular creeds out of the public funds, and the legislature can hardly be held to be responsible for the fact that their refusal to violate what seems to be a sound and just principle of government, creates, in the words of the report, dissatisfaction amongst Roman Catholics, not only in Manitoba and the North-west Territories, but likewise throughout Canada.

It is further to be observed that, inasmuch as the Public Schools Act of 1890 has been held to be within the jurisdiction of the provincial legislature, and the Act of 1894 is but the amendment of the Act of 1890, made for the purpose of more fully carrying out the plain intention and policy of the first Act, it is sufficiently clear that the Act of 1894 is within the jurisdiction of the legislature and deals with a subject which the provincial authority has power to regulate. Disallowance of the Act of 1894, as suggested by the memorialists, would be a most unjustifiable attempt to prevent the legislature from performing that duty which has been judicially declared to appertain to it and it may be assumed that such disallowance would call forth an emphatic protest.

The government and legislative assembly would unitedly resist by every constitutional means any such attempt to interfere with their provincial autonomy.

On the recommendation of the honourable the Attorney General,—

Committee advise that the foregoing report of the honourable the Attorney General be approved.

Respectfully submitted,

THOS. GREENWAY,  
*Chairman.*

Executive Council Chamber, 20th October, 1894.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th March, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th February, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that certain correspondence and petitions have been referred to him concerning chapter 28 of the statutes of the province of Manitoba, passed in the 57th year of Her Majesty's reign (1894) intituled :

"An Act to amend the Public Schools Act," which Act was assented to on the 2nd of March, 1894, and received by the Secretary of State for Canada on the 6th of March, 1894.

The correspondence and petitions include the following :—

1. A petition of his Eminence the Cardinal, Archbishop of Quebec, the Most Reverend Archbishops and the Right Reverend the Bishops of the Roman Catholic Church of Canada, and others.

These petitions having regard to the statute in question, seek the exercise of the power of disallowance.

The undersigned observes that, while the enactment of the amending statute is made the occasion for the submission of these petitions, the grounds of complaint are mainly directed to the principal legislation of 1890, rather than the amending Act now under consideration, and so far as any grounds are urged against the validity of the latter Act, they do not differ in character from those which have been previously set up, and are still being pressed with regard to the statute of which it is an amendment. It appears to the undersigned, and the petitioners have not attempted to controvert the view, that any question which might be raised as to the validity of this amendment, has been set at rest by the decision of the judicial committee of the Privy Council in the case of "*Barrett vs. The City of Winnipeg*," in which the principal legislation was held to be *intra vires* of the provincial legislature.

If the petitioners were to contend that the amending legislation is of a different character, and does consistently with what has been decided "prejudicially affect any right or privilege with respect to denominational schools which any class of persons had by law or practice in the province at the union," the question could be raised in the courts, where the matter would be judicially determined, and the Act declared invalid, if a sufficient case were established.

In so far as the petitioners seek the exercise of the authority which under section 22, of the Manitoba Act, is vested in your Excellency in Council by way of appeal, it appears to the undersigned that in view of the circumstances now existing, it is unnecessary to deal with this feature of the petition in this report.

The undersigned, therefore, in accordance with the policy adopted respecting the Act of 1890, recommends that the statute in question be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Manitoba for the information of his government, and that a copy be also transmitted to Mr. Ewart, Q.C., of Winnipeg, the solicitor of the petitioners.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*



## MANITOBA, 58-59 VICTORIA, 1895.

### 3RD SESSION—8TH LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th November, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd October, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Manitoba in the fifty-eighth and fifty-ninth years of Her Majesty's reign (1895), chapters 1 to 3, 5, 7 to 54 inclusive, received by the Secretary of State for Canada on the 6th of April and 8th July, 1895, and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts, chapters 4 and 6, are the subject of a separate report.

The undersigned recommends that, if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts be sent to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th November, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th October, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to call the attention of your Excellency to an Act passed at the last session of the legislature of the province of Manitoba, being chapter 4 of 58 and 59 Victoria (1895) intituled.

Chap. 4. "An Act respecting corporations incorporated out of Manitoba," which was assented to on the 28th day of March 1895, and received by the Secretary of State for Canada on the 6th day of April, 1895.

Section 2 provides as follows :—

"Any company, institution or corporation duly incorporated under the laws of Great Britain and Ireland or of the Dominion of Canada or of the late province of Canada, or of any of the provinces of Canada, or of any state of the United States of America, or of any other foreign state or country duly authorized to carry out or effect any of the purposes or objects to which the legislative authority of the legislature of Manitoba extends, may obtain a license from the Lieutenant-Governor in Council authorizing it to carry on its business within the province of Manitoba, on compliance with the provisions of this Act, and said company, institution or corporation, shall thereupon have the same powers and privileges in Manitoba as if the same were incorporated under the provisions of a statute of the province of Manitoba : provided, however, that the Lieutenant-Governor in Council may restrict such license in any manner that may seem desirable."

Section 9 provides that : "No company, institution or corporation, not incorporated under the two provisions of the statutes of this province and not having obtained a license under this Act, except those mentioned in subsection 2 of section 2 of this Act, shall be capable of taking, holding or acquiring any real estate within this province, or of exercising the powers mentioned in section eleven of this Act."

The following powers are mentioned in section 11, namely : power to take and hold mortgages of real estate and railway, municipal or other bonds, power to lend money on security of such mortgages or bonds whether charged on the real estate within the province or not, power to transfer such mortgages, and generally the powers and privileges with regard to lending moneys and transacting business within the province, which private individuals might have and enjoy so far as the same be within the competence of the legislature of Manitoba to grant.

These sections, therefore, enable any company incorporated by the parliament of the United Kingdom or of Canada to obtain from the Lieutenant-Governor in Council of the province of Manitoba, a license, authorizing it to carry on business within the province, and declare such company incapable of holding real estate within the province or exercising any of its corporate powers which might have been conferred by the legislature of the province, unless so licensed. There are, of course, many powers which might be conferred upon a corporation by the parliament of the United Kingdom or by the parliament of Canada which could also be conferred by the legislature of the province, and if the Act is to have effect according to its terms it would seem to follow that none of these powers could be validly exercised within the province, without the consent of the Lieutenant-Governor in Council.

The exercise of powers conferred by the parliament of the United Kingdom cannot certainly be limited by any such condition, and in the opinion of the undersigned, it is also incompetent for the province to limit or forbid the exercise of powers which have been or may be lawfully conferred by the parliament of Canada under the authority of section 91 of "The British North America Act."

For these reasons and the further reasons stated in the report of the late Minister of Justice to his Excellency the Governor General in Council, dated 16th July, 1887, upon a statute of the province of Quebec, 49-50 Victoria, chapter 39, intituled "An Act to authorize certain corporations and individuals to loan and invest money in this province" and in a report of the late minister to your Excellency's predecessor in Council, dated 31st March 1891, recommending the disallowance of an Act passed by the legislature of the province of Manitoba, 53 Victoria, chapter 23, intituled "An Act to authorize companies, institutions or corporations incorporated out of this province to transact business herein," it appears to the undersigned that the statute in question is *ultra vires*, so far as it relates to companies incorporated by the Parliament of the United Kingdom or of Canada, also that if it could have any operation as to companies incorporated by the Parliament of Canada, it might prove prejudicial to the general interests of Canada, having regard to the disposal of land in Manitoba, owned by the Crown in the right of Canada, and otherwise.

The undersigned would, therefore, recommend that a communication be addressed to the Lieutenant Governor of the province with a copy of this report (if approved) requesting his honour to state the reasons, if any, upon which he is advised that the Act should not be disallowed.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th November, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd October, 1895.

*To his Excellency the Governor General in Council :*

The undersigned has the honour to submit his report upon an Act passed at the last session of the legislature of the province of Manitoba, 58 and 59 Victoria (1895).

Chapter 6, intituled : "An Act respecting the constitution and practice of the Court of Queen's Bench," which was assented to on the 29th March, 1895, and received by the Secretary of State for Canada on the 6th April, 1895.

By section 85 it is enacted that the judges of the several county courts other than the judges of the county court for the eastern judicial district, or any portion thereof, shall be judges of the Court of Queen's Bench for Manitoba, for the purposes of their jurisdiction in connection with the Court of Queen's Bench, and that in the exercise of such jurisdiction they may be styled local judges of the court, and by rule 31 of the rules of court appended to the statute, it is provided that the county court judge of every judicial district, other than the eastern judicial district, or parts thereof, shall in all actions brought in his judicial district be a local judge of the court.

This legislation, in the opinion of the undersigned, so far as it intends to constitute and appoint judges of the county court, as local judges of the Court of Queen's Bench, is *ultra vires*. It appears to the undersigned, however, that these provisions may be construed as constituting the office and jurisdiction of local judge, and declaring judges of the county court eligible for appointment, in which view, if commissions were issued by your Excellency appointing the county court judges as local judges of the high court within their respective judicial districts, no doubt could exist as to the validity of such appointments. The undersigned, therefore, recommends that the Act be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Copy of a report of a Committee of the Executive Council re Chapter 4, approved by His Honour the Lieutenant-Governor on 7th February, 1896.*

On the recommendation of the honourable the Attorney-General, the committee advise that report of the honourable the Attorney-General annexed, hereto, be approved.

Certified,

C. GRAYBURN,  
*Clerk, Executive Council.*

*Report of the Hon. the Attorney General of Manitoba.*

WINNIPEG, MAN., 7th February, 1896.

The undersigned has the honour to report that he had under consideration the Order in Council of the 8th of November submitted by his honour the Lieutenant-Governor for the consideration of his government and relating to a statute of the province of Manitoba passed in the fifty-eighth year of Her Majesty's reign, 1895, intitled "An Act respecting Corporations incorporated out of Manitoba," assented to on the 28th day of March, A.D. 1895, and received by the Secretary of State for Canada, on the 6th day of April, A.D. 1895.

As stated in the said Order in Council the said Act contained among others the following provisions :—

Section 2. "Any company, institution or corporation duly incorporated under the laws of Great Britain or Ireland or of the Dominion of Canada, or of the late province of Canada, or of any state of the United States of America, or of any other foreign state or country duly authorized to carry out or effect any of the purposes or objects to which the legislative authority of the legislature of Manitoba extends, may obtain a license from the Lieutenant-Governor in Council, authorizing it to carry on its business within the province of Manitoba, on compliance with the provisions of this Act, and said company, institution or corporation, shall thereupon have the same powers and privileges in Manitoba as if the same were incorporated under the provisions of a statute



of the province of Manitoba; Provided however, that the Lieutenant-Governor in Council may restrict such license in any manner that may seem desirable."

Section 9. "No company, institution or corporation, not incorporated under the provisions of the statutes of this province and not having obtained a license under this Act, except those mentioned in subsection 2, of section 2 of this Act, shall be capable of taking, holding, or acquiring any real estate within this province, or of exercising the powers mentioned in section 11 of this Act."

Section 11. "Such company, institution or corporation so licensed, may take and hold any mortgages or real estate and any railway, municipal or other bonds of any kind whatsoever, and on the security thereof may lend its money, whether the bonds form a charge on real estate within the province or not, and may hold such mortgage in its corporate name, and may sell and transfer the same at its pleasure, and in all respects shall have and enjoy the same powers and privileges with regard to lending its moneys and transacting its business within the said province as a private individual might have and enjoy, so far as may be within its corporate powers and within the competence of the legislature of Manitoba to grant:"

Provided however, that save as provided in section 10, of this Act, "such company, institution or corporation shall sell or dispose of any real estate to which it may acquire a title in fee simple, by foreclosure, by the release of the equity of the redemption therein, or in any other way whatsoever, within twelve years from the date of acquiring title as aforesaid;" and "Provided also, that if any such company, institution or corporation shall hold the personal covenant of any mortgagor for the mortgage, debt and interest, or shall have recovered judgment therefor, or a personal order for payment of the amount, the said company, institution or corporation may, upon discharging the mortgagor or his executors administrators and assignee, from such covenant, debt or order, hold the said real estate for a further term of five years; but such discharge shall be given prior to the expiration of the term of twelve years above mentioned, and evidence thereof shall be filed with the provincial secretary." 46 and 47 V., c. 33, s. 5 part; 49 V., c. 42, s. 5; 52 V., c. 35, s. 30.

The order in council declares the Act in question, in the opinion of the honourable the Minister of Justice to be *ultra vires* of the legislature of Manitoba, and it is desired that if any reasons exist why same should not be disallowed, such reasons should be made known.

The Act was passed at the last session of the legislature of Manitoba, largely for the purpose of consolidating the law upon the subject of foreign corporations. It was not intended by the legislature to incorporate any important new principle into the statute law upon the subject, nor in the opinion of the undersigned has any such principle been so incorporated. The principle of the above section 9, which is the portion of the Act particularly complained of, has been clearly laid down in the statute law of Manitoba since the year 1886. It is in effect a re-enactment of section 13, of chapter 24, of the revised statutes of Manitoba which in turn was taken from section 4, of chapter 11 of the statutes of 1886. Although the wording of section 9 of the Act in question is slightly different from the wording of the former sections, the principle is not altered, and the extension of the operation of the principle would appear, from a careful examination, to be very limited in practical effect.

The section quoted from the Revised Statutes, chapter 24, section 13, forbids the holding or acquiring of any real estate in the province by a foreign corporation except under license from the provincial authority. This prohibition would prevent the effective exercise of most, if not all, of the powers mentioned in section 11 of the present Act.

The section complained of, therefore, as a matter of fact, introduces no new principle into the statute law of the province, and if it extends the operation of a principle already recognized, the extension is extremely limited in effect. It is submitted that the fact of the section in question being merely a re-enactment of a statutory provision, which had been enacted and permitted to stand for years, and which has never been attacked in the courts of this province, is itself a sufficient reason why the Act in question should not be disallowed, except special reasons can be assigned therefor, or except legal authority for declaring the clause to be unconstitutional has arisen

in the meantime. No special reasons are assigned, and it is not thought that any legal authority has arisen indicating the Act to be unconstitutional.

It is also submitted as a conclusive reason why the Act should not be disallowed, that such disallowance will not operate to remove the provision complained of from the statute law of the province, because it will revive chapter 24 of the Revised Statutes of Manitoba, which contains, as above stated, an almost exactly similar provision.

If there is any difference in effect in the two sections, the difference is very slight, and it may be affirmed with certainty that the principle of the two sections is precisely the same.

Upon the general principle of the section in question, it is submitted with all deference, in opposition to the view of the honourable the Minister of Justice, that the said section is not *ultra vires* of the legislature. The powers conferred by the Imperial parliament and the Dominion parliament upon such companies as may be affected by the Act, are not conferred in derogation of the power of the legislature of the province to legislate upon the subjects of property and civil rights. While the Acts or charters of incorporation may be perfectly valid and are so recognized, it is submitted that it is perfectly competent for the legislature to make provision as to the conditions, under which such companies shall transact business affecting property and civil rights in the province.

The cases of the Citizens' Insurance Company of Canada, and the Queen's Insurance Company, of Canada, *vs.* Parsons, 7 Appeal Cases, 96, and the Colonial Building and Investment Association *vs.* the Attorney General of Quebec, 9 Appeal Cases, 157, clearly lay down the principle above affirmed, and following these cases it is submitted that the enactment here complained of would be held to be *intra vires*, if submitted to the courts. If the Act, therefore, be *intra vires*, and of a purely local nature, seeking only to make regulations affecting the transaction of business within the province which are in no way prohibitive, vexatious or difficult to comply with, it is submitted that there is no valid reason why the Act should be disallowed.

All of which is respectfully submitted,

CLIFFORD SIFTON,  
*Attorney General.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th March, 1896.*

DEPARTMENT OF JUSTICE, OTTAWA, 12th March, 1896.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to refer to the report of his predecessor, dated the 24th of October last, which was approved by your Excellency in Council on the 8th of November last, touching a statute of the province of Manitoba, passed in the fifty-eighth year of Her Majesty's reign (1895) intitled "An Act respecting Corporations incorporated out of Manitoba," and to the observations thereon of the honourable the Attorney General for the province of Manitoba as set forth in a copy of a report of a committee of the Executive Council of that province, approved by his honour the Lieutenant-Governor on the 7th February last, which report has been referred to the undersigned by your Excellency in Council.

The undersigned is unable to concur in the sufficiency of the reasons urged by the Attorney General in support of the enactment in question. It is doubtless true that the Act is intended to consolidate the Foreign Corporations Act of Manitoba, as amended by the provincial statutes, 55 Victoria, chapter 4, and 56 Victoria, chapter 5, but it is also intended to enlarge the scope of previous legislation in a manner which the undersigned conceives to be *ultra vires* of the legislature, and prejudicial to the general interests of Canada. The previous statutes appear to have been left to their operation without remark, and it is not necessary at present, nor would it be useful to consider whether those statutes are upheld by the dictum of the judicial committee of the Privy Council in the case of *The Citizens'*

Insurance Company of Canada *vs.* Parsons, L. R. 7, Appeal Cases 96, as re-stated and affirmed in the case of the Colonial Building and Investment Association *vs.* The Attorney General of Quebec, L. R. 9 Appeal Cases, 157. If that question were now presented, it would be necessary to inquire how far, in view of the later decisions of the Judicial Committee in the cases of Tenant *vs.* The Union Bank of Canada, and the Attorney General of Ontario *vs.* The Attorney General of Canada, Appeal Cases, 1894, 31 and 189, effect would be given to the dictum as affecting Dominion corporations in the exercise of powers conferred upon them by parliament and strictly relating to the subjects of legislation enumerated in section 91 of "The British North America Act."

The principal ground upon which the statute is stated to be *ultra vires* in the report, which was approved by your Excellency on the 8th November last, is the incompetency of a provincial legislature to prohibit the exercise of powers conferred either by the parliament of the United Kingdom, or within the scope of subjects enumerated in section 91 of "The British North America Act," by the Parliament of Canada.

The undersigned cannot agree in the statement that such legislation can be supported upon the principle (which he does not concede to have been established by the judicial committee) that authority to hold land conferred upon a corporation by the Dominion parliament, would be limited in each province by the laws respecting mortmain prevailing there.

The undersigned apprehends that it has been held by the two last mentioned decisions of the committee that the legislative powers of the parliament of Canada, depending upon section 91 may be fully exercised, although with the effect of modifying civil rights in the province; also that the Dominion Parliament, in legislating with regard to a subject enumerated in section 91, has power to enact ancillary provisions, relating to the enumerated subjects, and affecting rights, which but for the enactment of such provisions by parliament would have been within the legitimate range of provincial legislation. It is evident that the authority thus possessed by parliament would be illusory and not capable of effective use, if the operation of a Dominion statute, enacted in pursuance of such authority, may be limited by a provincial legislature in the manner in which it is now sought to limit the exercise of rights competently conferred by parliament. These considerations, in the opinion of the undersigned, constitute special reasons for the disallowance of the statute, notwithstanding the fact that it contains other provisions which derived effect from previous legislation, which has been repealed by the Act in question. No attempt has been made to justify the Act as a measure of taxation. To the undersigned it appears that its object is rather to control the business of corporations not incorporated by the legislature of the province, than for the purpose of revenue, because, among other reasons, the Lieutenant-Governor is given power to restrict the license in any manner that may seem desirable, and the extent of land which any company licensed may hold in perpetuity in any city, town or village, is also limited by the statute to one acre, notwithstanding that the company's charter may empower it to hold more land. The undersigned fails to recognize any reason arising out of this view of the case, which should influence the conclusion to which he has arrived, upon the grounds already adverted to, that the general interest requires the disallowance of the Act.

The undersigned, therefore, and for the additional reasons stated, and referred to in the approved report of the 8th November last, recommends that the Act be disallowed.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted,

A. R. DICKEY,  
*Minister of Justice*

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 11th of April, 1896, Vol. XXIX., No. 41, page 1879.*



## BRITISH COLUMBIA, 35TH VICTORIA, 1872.

1ST SESSION—1ST PARLIAMENT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General on the 30th September, 1872.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th September, 1872.

Upon a despatch, numbered 60, and dated the 11th May last, from the Lieutenant-Governor of British Columbia, transmitting certain bills passed by the legislative assembly of that province during its then recent session, which had been reserved for the signification of the pleasure of the Governor General, and transmitting also a copy of the report of the Attorney General, the undersigned has the honour to report as follows:—

“An Act to amend the Qualification and Registration of Voters Act, 1871.”

The report of Mr. Attorney General McCreight recommended the reservation of the Act, upon the ground that the 13th clause precluded the exercise of the electoral franchise, in respect to the legislative assembly, by Chinese and Indians, and he was of opinion that the same was in contravention of the instructions furnished to governors of colonies, and also of the British North America Act, 1867, section 91, subsection 24.

Upon the first point the undersigned is of opinion that the Imperial instructions issued to governors of colonies, and which accompanied their commissions direct from the Queen, are not applicable to the cases of Lieutenant-Governors of provinces of Canada, who receive their commissions from the Governor General under the great seal of Canada, and to whom instructions are to be communicated by the terms of those commissions, from the Governor General of Canada in Council, or through any member of the council.

Every deference would, of course, be paid to the terms of instructions which had been given by the Imperial government to governors of colonies, and the view entertained by Mr. Attorney General McCreight, of reserving the bill under these circumstances, has been exercised with much discretion.

It may, however, be observed, that there is no instruction of such a nature in the commission or royal instructions to the Governor General, since the year 1867.

Upon the second point, as to the jurisdiction of the legislature of British Columbia, as it has been exercised in this instance, the undersigned has the honour to state that he is of opinion that the British North America Act, 1867, sec. 91, subsection 24, which places within the exclusive legislative authority of the parliament of Canada, Indians and lands reserved for Indians,” has reference to legislation connected with Indians generally, and to lands reserved for them.

The order of the Queen in Council, under which British Columbia was admitted to the union, is section 13, as follows:—

"The charge of the Indians, and the trusteeship and arrangement of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbian Government, shall be continued by the Dominion government after the union."

But by section 10 of that Order in Council, the provisions of the British North America Act, 1867, "shall, except, &c., be applicable to British Columbia, in the same way, and to the like extent, as they apply to the other provinces of the Dominion, and as if the colony of British Columbia had been one of the provinces originally united by the said Act," and by section 14, "the constitution of the executive authority, and of the legislature of British Columbia, shall, subject to the provisions of the British North America Act, 1867, continue as existing at the time of the union, until altered under the authority of the said," &c.

Now it is by the "British North Act, 1867," section 92, enacted that in each province the legislature may exclusively make laws in relation to, amongst other classes, the following, viz. :—"The amendment, from time to time, notwithstanding anything in this Act, of the constitution of the province, except as regards the office of lieutenant-governor."

This, it is apprehended, confers on each province the right of legislating as to its franchise.

It may be mentioned that this right has been exercised by the province of Ontario in respect to the right of Indians to vote in the district of Algoma at elections of members of the legislative assembly of that province, by 33 Victoria, chapter 25, section 34, which excepts from the rights of franchise "Indians belonging to tribes and Indians in receipt of government aid or bounty."

Under these circumstances, the undersigned is of opinion that the legislature of British Columbia have authority to legislate in their own discretion as to parties by whom the right of franchise in respect of the legislative assembly may be exercised.

The undersigned has, therefore, the honour to report that, in his opinion, this Act may receive the assent of the Governor General.

The undersigned recommends, however, that the attention of the Lieutenant-Governor of British Columbia be called to the 10th section of the Act, which provides a substituted section for section 3 of the Act which it proposes to amend.

By this section it is provided who shall have the right to vote at elections of members of the legislative assembly, and amongst other requisites is one that the voter shall be entitled to the privilege of a natural born British subject, &c. But it is provided "that no natural-born British subject who has removed his allegiance, or sworn allegiance to any foreign state, or become the citizen of any foreign state, shall be entitled to be registered under the provisions of this Act, until he shall have taken the oath of allegiance to Her Majesty, before some judge of the supreme or county court, magistrate or justice of the peace in this province which oath such judge, magistrate or justice of the peace is hereby authorized to administer," &c.

Upon the principle before suggested, that it is within the legislative authority of the province to regulate by whom the franchise shall be exercised, it is within their authority to provide, if they so desire, that aliens shall not have the right to vote; but if this proviso be intended to have the effect of naturalizing, as a British subject, any person who has removed his allegiance, or sworn allegiance to, or become the citizen of any foreign state, &c., it is recommended that the legislature of British Columbia be invited to repeal the proviso, as the subject of the naturalization of aliens is one which by the "British North America Act, 1867," section 91, subsection 25, is left exclusively to the legislative jurisdiction of the Parliament of Canada, and Acts have been passed accordingly 31 Victoria, chapter 66, and 34 Victoria, chapter 22—and reference may further be had on this subject to the Acts of the Imperial Parliament of the 33rd Victoria, chapters 14 and 102, as amended further by an Act of 1872, in respect to the modes by which British nationality may, under certain circumstances, be resumed.

I concur in this report.

JOHN A. MACDONALD.

H. BERNARD,  
*Deputy Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 30th September, 1872.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th September, 1872.

Upon a despatch (No. 60) dated the 11th of May last, from the Lieutenant-Governor of British Columbia, transmitting certain bills passed by the legislative assembly of that province during its then recent session, which had been reserved for the signification of the pleasure of the Governor General, and transmitting, also a copy of the report of the Attorney General, the undersigned has the honour to report as follows :—

“An Act to amend the Military and Naval Settlers’ Act, 1863.”

The object of this Act is to enlarge the facilities for the acquirement of land in British Columbia by military and naval settlers, having regard to certain provisions of No. 43 of the Revised Statutes of 1871, which it is proposed to amend and extend in its operation.

The undersigned is of opinion that the operation of this Act would be in conflict with the 11th section of the terms of union of British Columbia with Canada, and he recommends, therefore, that the assent of the Governor General be withheld therefrom.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur.

JOHN A. MACDONALD.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 12th October, 1872.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th October, 1872.

Upon a despatch (No. 60, dated the 11th May), from the Lieutenant-Governor of British Columbia, transmitting certain bills passed by the legislative assembly of that province during its then recent session, which had been reserved for the signification of the pleasure of the Governor General, and transmitting, also, a copy of the report of the Attorney General, the undersigned has the honour to report as follows :—

“An Act to impose a Wild Land Tax.” This Act imposes a tax of four cents an acre upon all lands, with certain exceptions.

By subsection *a* of the first clause of this bill, lands vested in, or held in trust for Her Majesty, or for the public uses of the province, are exempt from the tax.

Although, under this exemption, the lands to be conveyed in trust by the Government of British Columbia to that of the Dominion under the 11th section of the terms of union between British Columbia and the Dominion, will be free from the tax, it is clear that whenever these lands are conveyed to any company incorporated for the purpose of the construction of the Pacific Railway, the exception will cease.

Now the imposition of so heavy a tax as 4 cents an acre upon this large tract of wild land will render it practically valueless.

The Government of Canada are taking active steps to endeavour to induce capitalists to engage in the great undertaking of constructing a railway to connect the two oceans. The chief inducement to such capitalists is the promise of a large grant of land in aid of the enterprise, and the imposition of such a tax upon these railway lands would greatly diminish the prospect of a company being formed.

The Attorney General seems to agree with the undersigned in this opinion. Under the circumstances, therefore, the undersigned begs respectfully to recommend that the assent of your Excellency be withheld from this bill.



He also begs leave to suggest that the Lieutenant-Governor of British Columbia be instructed to press upon his government, the expediency of exempting these railway lands in any Act that may be hereafter passed imposing a land tax.

He would further suggest, to prevent the possibility of a doubt, that subsection *a*, above referred to, should in any new Act be amended, by exempting lands *now or at any time hereafter* vested in or held in trust for Her Majesty.

All of which, &c.,

JOHN A. MACDONALD.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General on the 23rd December, 1872.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th December, 1872.

With reference to an Act passed by the legislature of the province of British Columbia at its first session, 35th Victoria, No. 4:

"An Act to define the privileges, immunities, and powers of the legislative assembly, and to give summary protection to persons employed in the publication of Sessional Papers;"

The undersigned has the honour to report that the same is objectionable. The Act in question appears to be a transcript of the Act of the province of Ontario, 32nd Vic., cap. 3, 1868.

Upon the last mentioned Act, the undersigned had the honour to report that it was objectionable, and that it appeared to him that it was in excess of the power of the provincial legislature.

The report of the undersigned was transmitted to the Secretary of State for the Colonies, and by him referred to the law officers of the Crown in England, and the Attorney General and Solicitor General advised that, having considered the Act, they were of opinion that it was not competent for the legislature of the province of Ontario to pass it, and that it was inconsistent with the provisions of sections 92 and 96 of the "British North America Act, 1867."

Under these circumstances, the Act of Ontario in question, was disallowed by proclamation of his Excellency the Governor General.

The undersigned has, therefore, the honour to recommend that communication be had with the Lieutenant-Governor of British Columbia to the above effect, and suggesting whether, under the circumstances, it is not advisable that the Act in question should be repealed during the second session of the legislature of that province.

JOHN A. MACDONALD,

*Minister of Justice.*

*Note.—Repealed by Act of British Columbia, 1873, 36th Victoria, cap. 35.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th January, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd January, 1873.

The undersigned, to whom were referred certified copies of the Acts passed by the legislature of British Columbia, in the 35th year of Her Majesty's reign, and assented to by the Lieutenant-Governor on the 11th of April last, has the honour to report:—

That he has examined carefully the said Acts, and with the exception of those undermentioned, finds them unobjectionable and such as could properly be passed by the legislature.

The Acts to which exception is taken are as follows:—No. 4. “An Act to define immunities, privileges and powers of the Legislative Assembly, &c.” A separate report has been made on this Act.

No. 12. “An Act to make provision for inquiries respecting Public Matters.”

The second clause of this Act is objectionable, inasmuch as it declares any wilfully false statement made by a witness on oath, to be a misdemeanour, punishable in the same manner as wilful and corrupt perjury. This is legislation respecting criminal law, which by the Union Act, is vested in the parliament of Canada.

No. 31. “An Act to amend the Land Ordinance, 1870.” The fourth clause of this Act is objectionable for the same reason as above given with respect to Act No. 12.

No. 35. “An Act respecting Municipalities.” The 18th clause of this Act is also objectionable for the same reason. The attention of the government of British Columbia should be called to the three last mentioned Acts with a view to the repeal of the objectionable clauses during the present session of their legislature, and the undersigned would take the liberty of suggesting, that by the 15th paragraph of the 92nd clause of the “British North America Act, 1867,” a local legislature can enforce laws, by fine, penalty or imprisonment, without declaring any breach of those laws to be a crime.

No. 26. “An Act respecting the registration of births, deaths and marriages in the province of British Columbia.” The undersigned, while he recommends that this Act should be allowed to go into operation, desires to call attention to the fact that the power of the local legislature to pass the same may be questioned, as being connected with statistics, which by the 91st section of the “British North America Act, 1867,” paragraph 6, is a matter within the jurisdiction of the parliament of Canada.

No. 36. “An Act to make provision for the registration in British Columbia of certain Foreign Companies.” While also recommending that this Act be allowed to go into operation, the undersigned would, at the same time, express his opinion that no foreign company, having other than provincial objects, “can legally be registered under this Act.” See “British North America Act, 1867,” section 92, paragraph 11.

The undersigned has, therefore, the honour to recommend that all the said Acts be left to their operation, except Nos. 4 (already reported upon) 12, 31, 35.

JOHN A. MACDONALD,  
*Minister of Justice.*

*Lieutenant-Governor Trutch to the Hon. the Secretary of State for Canada.*

GOVERNMENT HOUSE, BRITISH COLUMBIA, 31st January, 1873.

SIR,—With reference to your despatch, No. 134, and No. 1, the contents of which I duly communicated to my ministers, I have the honour to inclose herewith, for the information of his Excellency the Governor General, a minute of the Executive Council of this province, expressing the concurrence of this government with the suggestions conveyed in your said despatches, for the repeal of Act No. 4 of the last session of the legislature of British Columbia, and for certain amendments of Acts No. 12, No. 31, and No. 35; and I have further to state that the bills to carry those suggestions into effect, have been laid before the legislative assembly.

I have, &c.,

JOSEPH W. TRUTCH,  
*Lieutenant-Governor.*

*Copy of a Report of a Committee of the Honourable the Executive Council, approved by His Honour the Lieutenant-Governor in Council on the 27th January, 1873.*

On a memorandum dated 27th January, 1873, from the Honourable the Attorney-General, reporting that it is advisable to repeal Act No. 4 of last session, "The Legislative Assembly Privileges Act, 1872," the same having been declared unconstitutional by the law officers of the Crown in England, to whom a similar Act passed in Ontario, in 1868, was referred for their opinion.

Also, that Act No. 12, "The Public Inquiries Aid Act, 1872," be amended by striking out that part of section 2 constituting a false statement a crime, by the use of the word "misdemeanour."

That Act No. 31, "The Land Ordinance Amendment Act, 1872," be amended in section 4 by striking out "shall be guilty of a misdemeanour and," and that a clause to that effect be inserted in the Land Amendment Act, 1873.

That Act No. 35, "The Municipality Act, 1872," be amended in section 18 by striking out the words "be guilty of a misdemeanour and," and that a clause to that effect be inserted in the Municipality Amendment Act, 1873."

The Secretary of State for the provinces has suggested the said repeal and said amendments. The Attorney General recommends the changes. The committee advise that the repeal and amendments in the different Acts be approved.

JAS. JUDSON YOUNG,  
*Clerk Executive Council.*



## BRITISH COLUMBIA, 36TH VICTORIA, 1872-73.

## 2ND SESSION—1ST PARLIAMENT.

*Lieutenant-Governor Trutch to the Hon. the Secretary of State for the Provinces.*

GOVERNMENT HOUSE, BRITISH COLUMBIA, 5th March, 1873.

SIR,—I have the honour to inclose herewith a minute of the Executive Council expressing the opinion that it is advisable, in the interests of this province, that the "Aliens Ordinance, 1867," of British Columbia, should be so amended that aliens may, at any time, upon making a declaration before a justice of the peace, of their intention to become British subjects, be entitled to the privileges of citizenship, as far as availing themselves of the rights of pre-emption, under the land law of the province, subject to the fulfilment subsequently of the requirement of the Act as to their taking the oath of allegiance in the Supreme Court of British Columbia, before a crown grant of any land pre-empted by them shall be issued; and requesting me to urge the Dominion government to take steps towards the passage of such a measure by the parliament of Canada.

I beg, therefore, that you will lay this despatch and its inclosure before his Excellency the Governor General, and commend the desire of this government to his Excellency's favourable consideration.

I have, &c.,

JOSEPH W. TRUTCH,  
*Lieutenant-Governor.*

*Copy of a report of a Committee of the Honourable the Executive Council, approved by His Honour the Lieutenant-Governor in Council on the 28th February, 1873.*

On a memorandum, dated 17th February, from the Honourable the Chief Commissioner of Land and Works, reporting that application is constantly being made by aliens now resident in other countries, for information as to the terms upon which they can pre-empt land in British Columbia, and that the present law compelling such parties to reside one year in the province before allowing them to pre-empt, virtually prohibits their settlement in this province; and recommending that his Honour the Lieutenant-Governor be requested to urge upon the Dominion government the advisability of amending the present Alien Act of British Columbia, so that aliens who may signify their intention, before a justice of the peace, to become British subjects, may be able to pre-empt land within this province, immediately after their having made such declaration.

The committee advise that the recommendation be approved.

JAS. JUDSON YOUNG,  
*Clerk Executive Council.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th June, 1873.*

DEPARTMENT OF JUSTICE, 3rd June, 1873.

The undersigned, to whom was referred the letter of his Honour the Lieutenant-Governor of British Columbia of 5th March, 1873, requesting that the Dominion

government would take steps for the passage of an Act by its legislature, amending and extending the "Aliens Ordinance Act, 1867," of that province, has the honour to report that by the terms of the British North America Act, 1867, as applied to British Columbia, the jurisdiction over property and civil rights is vested in the provincial legislatures exclusively, who by law can determine the terms upon which aliens may become entitled to pre-empt land within the province. The right of legislating upon naturalization possessed by the Dominion legislatures, extends only to conferring "political status."

JOHN A. MACDONALD,  
*Minister of Justice.*

*Lieutenant-Governor Trutch to the Hon. the Secretary of State of Canada.*

GOVERNMENT HOUSE, BRITISH COLUMBIA, 27th February, 1873.

SIR,—I have the honour to transmit herewith, for such action as his Excellency the Governor General may be pleased to take in reference thereto, an authenticated copy of a bill, chapter 43, intituled: "An Act to render children born out of lawful wedlock, whose parents now are, or may hereafter, under certain restrictions, be married," which was passed by the legislative assembly during its recent session, but has been reserved by me for the signification of his Excellency the Governor General's pleasure in regard thereto.

I also inclose, for his Excellency's consideration, a copy of the report of my Attorney General on the bill.

I have, &c.,

JOSEPH W. TRUTCH,  
*Lieutenant-Governor.*

*Hon. Attorney General Walkem to the His Honour the Lieutenant-Governor.*

ATTORNEY GENERAL'S OFFICE, 21st February, 1873.

SIR,—I have the honour to report, for the information of your Excellency, upon an Act passed during the present session of the legislature, intituled: "An Act to render legitimate children born out of lawful wedlock, whose parents now are, or may hereafter, under certain restrictions, be married."

This bill was passed last session, and was reserved for the consideration of his Excellency the Governor General.

His Excellency not having signified his assent to the Act, it is presumed that the objections urged against its adoption by the Attorney General, in his report to your Excellency, bearing date the 8th day of May, 1872, have prevented its being assented to.

The Act being identical with one passed last year, the same objections apply, and I would, therefore, respectfully request your Excellency to withhold your assent, and refer it for the consideration of his Excellency the Governor General.

I have, &c.,

GEORGE A. WALKEM,  
*Attorney General.*

*Memo.—No report appears to have been made on this despatch.*

*Lieutenant-Governor Trutch to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, BRITISH COLUMBIA, 12th February, 1873.

SIR,—I have the honour to inclose herewith copies of an address to me from the legislative assembly of this province, and of the explanatory report appended thereto, requesting me to recommend to the government of the Dominion the passage of an Act of the parliament of Canada, legalizing all sales of land in this province since the 1st June, 1870. I also inclose a minute of my Executive Council in reference to this address and report, and, in accordance with the advice of my ministers, I beg to submit, for the consideration of his Excellency the Governor General, the request of the legislative council preferred in the said address, the grounds for which are set forth in the report annexed thereto.

I have, &c.,

JOSEPH W. TRUTCH,  
*Lieutenant-Governor.*

*Address from the Legislative Assembly to His Honour the Honourable Joseph William Trutch, Lieutenant-Governor of the Province of British Columbia.*

*May it please your Excellency:—*

We, Her Majesty's dutiful and loyal subjects, the legislative assembly of the province of British Columbia, in parliament assembled, beg leave to approach Your Excellency with our respectful request, that your Excellency will be pleased to recommend the Dominion government to pass an Act legalizing all sales of land in this province since the 1st June, 1870.

*Address from the Legislative Assembly to His Honour the Lieutenant-Governor.*

*To His Excellency the Honourable Joseph William Trutch, Lieutenant-Governor of the Province of British Columbia.*

*May it please your Excellency:*

We, Her Majesty's dutiful and loyal subjects, the legislative assembly of the province of British Columbia, in parliament assembled, beg leave to approach your Excellency with our respectful request that your Excellency will be pleased to forward the accompanying report to the proper authorities at Ottawa, to be considered in connection with the address already presented to your Excellency, respecting the legalizing of sales of land.

10th February, 1873.

*Copy of a Report of a Committee of the Honourable the Executive Council, approved by His Excellency the Lieutenant-Governor in Council on the 11th February, 1873.*

On a memorandum dated 10th February, 1873, from the honourable the president, reporting that an address passed by the legislative assembly on the 28th January, 1873, respecting the legalizing of sales of land by the Dominion government, and requesting that a certain report annexed thereto concerning the same be forwarded to the Dominion government; and recommending that his Excellency the Lieutenant-Governor be advised to forward the same;

The committee advise that the recommendation be approved.

JAS. JUDSON YOUNG,  
*Clerk Executive Council.*



*Report of Select Committee appointed to draft an explanatory Address to His Excellency the Lieutenant-Governor, in respect to legalizing Sales of Land in the Province since 1870.*

The "Land Ordinance, 1865," of the former colony of British Columbia, contained the following clause :—

"20. Any person in possession of 160 acres of land as aforesaid, may acquire the right to pre-empt and hold any further tract of unsurveyed and unoccupied land contiguous thereto, not exceeding 480 acres (and no more either directly or indirectly, save with the express sanction in writing of the Governor in that behalf) over and above the quantity of 160 acres aforesaid, upon the payment to the stipendiary magistrate of the district, of the sum of two shillings and one penny per acre for the same, as by way of instalment of the purchase money to be ultimately paid to the government after the survey of the same land."

The "Land Ordinance, 1870," Number 114 of the Revised Statutes of British Columbia, repeals the above mentioned "Land Ordinance, 1865," but contains the following provision in clause 2 :—

"But such repeal shall not prejudice or affect any rights acquired, or payments due, or forfeitures or penalties incurred, prior to the passing of this ordinance in respect of any land in this colony."

After the passage of the said Land Ordinance, 1870, the several Assistant Commissioners of Lands and Works in British Columbia construed the last above mentioned provision in clause 2 of the Land Ordinance, 1870, as preserving the right of such persons as had pre-empted 160 acres under the Land Ordinance, 1865, to purchase further tracts of contiguous lands (as mentioned in section 20 of the said Ordinance of 1865); and accordingly, after the passage of the said Land Ordinance, 1870, many persons who were in possession of land pre-empted under the Land Ordinance, 1865, were permitted to purchase contiguous land, and to enter into possession thereof.

Such purchasers were invariably required to pay, and did, in fact, pay 50 cents per acre to the government of British Columbia on account of the block of land contiguous to their pre-emption claims so purchased by them, and in many instances substantial and costly improvements have been made on the land so purchased by them.

On the 2nd day of July, 1872, the Attorney-General of the province gave the following opinion :—

*Opinion of the Honourable the Attorney General with respect to Pre-emptors taking up Land, in addition to their Pre-emptions, under the Land Laws prior to the Act of 1870.*

I understand the question, upon which I am asked to advise, to be this :—

Whether a person who has pre-empted land under the "Land Ordinance, 1865," can, after the 20th October, 1870, (the date at which the "Land Ordinance, 1870," came into force) invoke the assistance of the 20th section of the former ordinance, and, by payment of two shillings and one penny per acre, acquire the right to pre-empt and hold a further tract of unsurveyed and unoccupied land contiguous thereto, not exceeding 480 acres, etc., and I am of opinion that he has not that privilege.

As to such claims, if made since the 20th of July, 1871, I have already advised, having regard to the 11th section of the terms of union, and I then had occasion to consider the present question, though it became unnecessary to give any decided opinion upon it.

With respect to the general question, it seems plain that such alleged privileges cannot continue after the 20th October, 1870, unless preserved in "The Land Ordinance, 1870," by the words "but such repeal shall not prejudice or affect any rights acquired," &c., prior to "the passing of this ordinance;" and the question arises whether such person had, at that date, *acquired a right* within the meaning of those words, and

of the 20th section of the former ordinance. The words of that section are: "Any person in possession of 160 acres of land aforesaid may acquire the right to pre-empt and hold any further tract of unsurveyed and unoccupied land contiguous thereto, not exceeding 480 acres (and no more either directly or indirectly, save with the express sanction, in writing, of the governor in that behalf), over and above the quantity of 160 acres aforesaid, upon the payment to the stipendiary magistrate of the district, of the sum of two shillings and one penny per acre for the same, as by way of instalment of the purchase money to be ultimately paid to the Government, after the survey of the same land, and the meaning of "may acquire the right," &c., "upon the payment," &c., appears, from decided cases, as well as the reason of the thing, to be that the acquirement of the right and the payment of the money were to be concurrent acts, or that the pre-emptor might acquire the right upon the occasion or at the time of payment, and not otherwise; and if this be the case, no such right can now exist, except when payments were made or tendered prior to the 20th October, 1870.

Not only does this appear to be the plain grammatical meaning of the words which we are bound to adopt, but an inspection of these two ordinances, I think, shows that such was the intention of the legislature.

The words "may acquire the right to pre-empt," are used in the 12th section of "The Land Ordinance, 1865," where it also seems to be required that the applicant should previously, or at least contemporaneously with his pre-emption, perform certain conditions, and this construction was placed upon a very similar section in the "Vancouver Island Proclamation, 1862," by the Supreme Court of British Columbia, in *D. Trimble's case*.

Again, in the 10th section of "The Land Ordinance, 1870," it was provided that "The Chief Commissioner of Lands and Works may," &c., "survey pre-emption claims or purchased lands previous to the date of this ordinance," but there is silence as to such claims thereafter to be recorded under the 25th section of "The Land Ordinance, 1865."

And again, in the 25th section of the Land Ordinance, 1870, it is provided that a person occupying a pre-emption claim to the eastward of the Cascade Range at the date of the framing of that ordinance, if less than 320 acres, may, with the permission of the commissioner, pre-empt contiguous land, so as to make the total amount of his claim 320 acres, in language which seems to be scarcely reconcilable with the continuance of a right to pre-empt the additional 480 acres, as prescribed by the said 20th section.

It is observable that the right contemplated by the said 20th section was, in the first instance, at most an inchoate right; it was, at any time before its exercise, liable to be defeated by the survey or occupation of the contiguous land. Moreover, as the object of "The Land Ordinance, 1870," was to hand over the crown lands of Vancouver's Island to the legislature, and to require of pre-emptors *bona fide* residence, if the legislature had intended that a pre-emptor under "The Land Ordinance, 1865," should continue to be entitled, after any lapse of time, to obtain, with the consent of the governor, as much additional contiguous land as he wished, and that without personal residence, I think we should have found in the former ordinance clear language to that effect.

It may be worthy of consideration whether, inasmuch as a different construction appears to have been placed upon the ordinances, relief should not be sought from the legislature, as regards cases where hardship is likely to ensue.

J. F. McCREIGHT,  
*Attorney General.*

ATTORNEY GENERAL'S OFFICE, 2nd July, 1872.

VICTORIA, 23rd January, 1873.

Immediately after the said opinion was given the provincial government caused the before mentioned purchasers of land to be notified that they would be required to sur-

render the land purchased by them as aforesaid, and that the government would refund to them the money paid by them therefor.

The provincial government holds itself disabled, by the 11th article of the terms of the union, to pass an Act legalizing the purchases made under the circumstances above set forth.

A. ROCKE ROBERTSON,  
*Chairman.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General on the 21st October, 1873.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th October, 1873.

With reference to the despatch of his Honour the Lieutenant-Governor of the province of British Columbia, bearing date the 12th day of February last, inclosing copies of an address from the legislative assembly of that province, the undersigned has the honour to report:—

That such address requests the Lieutenant-Governor to recommend to the government the passage of an Act by the parliament of Canada, legalizing all sales of lands in the province of British Columbia since the 1st June, 1870.

As the two years within which the government of British Columbia were, by the terms of the union of that province with Canada, prevented from making any conveyance of land, have expired there does not seem to be anything now to prevent that government from granting conveyances to parties who have purchased lands since the 1st June, 1870.

It is, therefore, unnecessary to submit any measure to the parliament of Canada for that purpose.

All of which is respectfully submitted.

JOHN A. MACDONALD,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th March, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th March, 1874.

Upon the despatch of the Lieutenant-Governor of British Columbia, dated 27th February, 1873, transmitting the Acts passed by the legislature of that province, and which Acts were received by the Secretary of State at Ottawa on the 4th March, 1873, the undersigned has the honour to report that he considers the Acts mentioned in the annexed schedule, passed by the legislature of the said province of British Columbia in the second session thereof, to be free from objection, and he therefore recommends that the same be respectively left to their operation.

#### SCHEDULE.

Chapters 5 to 42.

A. A. DORION,  
*Minister of Justice.*

*Memorandum.*—Chapter 23. "An Act to incorporate the Victoria and Esquimalt Railway," contains a suspensory clause restricting its operation until assented to by the Governor General.



*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th March, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 9th March, 1874.

Upon the despatch of the Lieutenant-Governor of British Columbia, dated 27th February, 1873, received by the Secretary of State on the 14th March the undersigned has the honour to report, that the 2nd chapter, intituled : "An Act to authorize one Justice of the Peace to do any act, matter or thing heretofore to be done by two Justices of the Peace, and to give an Appeal to Courts of General or Quarter Sessions," provides that one Justice of the Peace may act in place of two, and also as to the validity of warrants ; and that any person who shall feel himself aggrieved by the judgment of any justice or justices adjudicating, or before whom he was convicted, may appeal to the next court of general or quarter sessions of the peace.

The undersigned has the honour to state that this is legislation respecting the law of criminal procedure, which appertains solely to the parliament of the Dominion, and the undersigned recommends, therefore, that the Act in question be disallowed.

A. A. DORION,  
*Minister of Justice.*

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 14th day of March, 1874. Vol. VII., No. 37, page 1189.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 15th March, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 9th March, 1874.

In further report upon the despatch of the Lieutenant-Governor of British Columbia, transmitting the Acts passed by the legislature of that province in its second session, the undersigned has to report upon the following Acts :—

Chap. 1. "An Act to amend the Land Ordinance Act, 1870."

Chap. 3. "An Act to amend the Mineral Ordinance, 1869."

Chap. 4. "An Act to amend the Gold Mining Ordinance, 1867, and the Gold Mining Amendment Act, 1872."

These Acts are respectively reserved as to their operation, either by express enactment or in effect, until the 21st day of July, 1873, and that date is evidently fixed as being at the expiration of the period of two years, by which, under the terms under which British Columbia entered the union, land was to be reserved by the government of British Columbia from sale, with a view to setting apart such lands as are requisite for the Canadian Pacific Railway. As such period of two years expired on the 21st July, 1873, the province had power to pass laws and make other arrangements for the sale of their lands, and there is, therefore, no objection to the passage of these Acts ; and the undersigned has the honour to recommend, therefore, that they be left to their operation.

But he suggests that communication be had with the Lieutenant-Governor of British Columbia, calling his attention to the practical inconvenience which must ensue to the government of Canada and British Columbia, if land be sold by the province on any portion of the line which may hereafter be selected as that of the Canadian Pacific Railway, and that his consideration be requested to the propriety of withholding from sale, or rights of pre-emption, lands which, in so far as surveys have been heretofore made, can possibly be contiguous to the line of railway, if any one of such surveys be adopted.

A. A. DORION,  
*Minister of Justice.*

## BRITISH COLUMBIA, 37TH VICTORIA, 1873-74.

## 3RD SESSION—1ST PARLIAMENT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd January, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th January, 1875.

The undersigned, to whom is referred copies of the statutes of the legislature of British Columbia, passed in the session held in the 37th year of Her Majesty's reign, has the honour to report:—

That the following Acts appear unobjectionable, and he recommends that they be left to their operation, viz.:—

Nos. 1, 3, 5 to 8, 10, 11, 13 to 25.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur.

T. FOURNIER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd January, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th January, 1875.

The undersigned has the honour to report:—

That the Act passed by the legislature of the province of British Columbia, in the 37th year of Her Majesty's reign, and assented to on the 2nd March, 1874, is the following:—No. 2, intituled: "An Act to amend and consolidate the laws affecting Crown Lands in British Columbia."

The title of the Act explains its object. It is a consolidation of the laws relating to the recording and pre-emption of lands, the surveying and sale of them; the regulation of miners' rights, &c.

By its concluding section, the Act is not to come into force, until the Lieutenant-Governor's assent thereto has been proclaimed by notice in the *British Columbia Gazette*.

The 2nd, or interpretation clause, defines that the words "Crown lands" shall "mean all lands of this province held by the Crown in free and common socage."

It is probably through inadvertence that this definition has been made, and that the tenure of free and common socage, which is that of freehold under grant from the Crown, is made applicable to lands of the Crown held as such by the Crown as lord of the soil.

Were it an intentional definition, it could only then mean a recognition of the Indian sovereignty therein, and that Her Majesty is tenant by freehold.

Abandoning, therefore, this statutable definition, which is inapplicable, the words "Crown lands," may, for the purpose of this memorandum, be considered to mean all lands in the province vested in the Crown of which no grant had been made.

A distinction is made between "unsurveyed land" and "surveyed land."

As to "unsurveyed land," it provides that any person qualified under that section may record any tract of unoccupied, unsurveyed and unreserved Crown lands (not being an Indian settlement) not exceeding the extent mentioned;

"Provided that such right shall not be held to extend to any of the aborigines of this continent, except to such as shall have obtained permission in writing to so record by a special order of the Lieutenant-Governor in Council."

The record is done by stating and marking out the boundaries of claim, and making a declaration in respect thereof.

As to "surveyed land," it is defined by 23rd section.

A provision is made by the 24th section as to who may pre-empt any tract of surveyed, unreserved, unoccupied and unrecorded land (not being an Indian settlement), and a similar proviso to that above mentioned prohibits the aborigines of the continent the right of pre-emption, except as before mentioned.

Such persons as pre-empt are known as "home settlers."

The undersigned deems it proper to notice that there is not in this Act any reservation of lands in favour of the Indians or Indian tribes of British Columbia; nor are the latter thereby accorded any rights or privileges in respect to lands, or reserves, or settlements.

On the contrary, the right to record unsurveyed land, or to pre-empt surveyed land, is expressly enacted not to extend to any of the aborigines, except such as shall have obtained permission in writing of the Lieutenant-Governor in Council.

Nor can the undersigned find that there is any legislation in force in British Columbia which provides reservations of lands for the Indians, the only ordinance in that respect being one of the 15th March, 1869, which speaks of Crown lands in the colony being Indian reserves or settlements.

The undersigned refers to the Order in Council, under which the province of British Columbia was admitted into the Dominion, and particularly the 13th section as to the Indians, which is as follows:—

"The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion government, and a policy as liberal as that hitherto pursued by the British Columbia government shall be continued by the Dominion government after the union. To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia government to appropriate for that purpose, shall from time to time be conveyed by the local government to the Dominion government in trust for the use and benefit of the Indians on application of the Dominion government; and in case of disagreement between two governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies."

The question as to the provision which has been made of reserves for the Indians, has been the subject of an Order of the Governor General in Council, dated 4th November, 1874, and it is not necessary, therefore, to enter upon a discussion of the merits of the case.

But having regard to the known, existing and increasing dissatisfaction of the Indian tribes of British Columbia at the absence of adequate reservation of lands for their use, and at the liberal appropriation for those in other parts of Canada upon surrender by treaty of their territorial rights, and the difficulties, which may arise from the not improbable assertion of that dissatisfaction by hostilities on their part, the undersigned deems it right to call attention to the legal position of the public lands of the province.

The undersigned believes that he is correct in stating, that with one slight exception as to land in Vancouver Island surrendered to the Hudson Bay Company, which makes the absence of others the more remarkable, no surrender of lands in that province has ever been obtained from the Indian tribes inhabiting it, and that any reservations which have been made, have been arbitrary on the part of the government, and without the assent of the Indians themselves, and though the policy of obtaining surrenders at this lapse of time and under the altered circumstances of the province, may be questionable, yet the undersigned feels it his duty to assert such legal or equitable claim as may be found to exist on the part of the Indians.



There is not a shadow of doubt, that from the earliest times, England has always felt it imperative to meet the Indians in council, and to obtain surrenders of tracts of Canada, as from time to time such were required for the purposes of settlements.

The 40th article of the treaty of capitulation of the city of Montreal, dated 8th September, 1760, is to the effect that,

"The savages or Indian allies of His Most Christian Majesty shall be maintained in the lands they inhabit if they chose to remain there."

The proclamation of King George III., 1763, erecting within the countries and islands ceded and confirmed to Great Britain by the treaty of the 10th February, 1763, four distinct governments, styled Quebec, East Florida, West Florida and Grenada, contains the following clauses:—

"And whereas, it is just and reasonable and essential to our interests and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories, as not having been ceded to us, are reserved to them, or any of them as their hunting grounds; we do, therefore, with the advice of our Privy Council, declare it to be our royal will and pleasure that no governor or commander-in-chief, in any of our colonies of Quebec, East Florida or West Florida, do presume upon any pretense whatever to grant warrants of survey or pass any patents for lands beyond the boundaries of their respective governments, as described in their commissions; as also, that no governor or commander-in-chief of our other colonies or plantations in America, do presume for the present and until our future pleasure be known, to grant warrants of survey or pass any patents for lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west; or upon any lands whatever, which, not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them; and we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve under our sovereignty, protection and dominion, for the use of the said Indians, all the land and territories not included within the limits, and territory granted to the Hudson Bay Company; as also all the land and territories laying to the westward of the sources of the rivers which fall into the sea from the west and north-west as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatsoever, or taking possession of any of the lands above reserved without our special leave and license for that purpose first obtained. And we do further strictly enjoin and require all persons whatsoever, who have either wilfully or inadvertently seated themselves upon any land within the countries above described, or upon any other lands, which not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

"And whereas great frauds and abuses have been committed in the purchasing lands of the Indians, to the great prejudice of our interests, and to the great dissatisfaction of the said Indians; in order, therefore, to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our Privy Council, strictly enjoin and require that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians, within those parts of our colonies where we had thought proper to allow settlements; but if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, at some public meeting or assembly of the said Indians, to be held for that purpose by the governor or commander-in-chief of our colony, respectively, within which they shall be; and in case they shall be within the limits of any proprietaries, conformable to such directions and instructions as we or they shall think proper to give for that purpose; and we do, by the advice of our Privy Council, declare and enjoin that the trade with the said Indians shall be free and open to all our subjects whatever; provided that every person who may incline to trade with the said Indians do take out a license for carrying on such trade from the governor or

commander-in-chief of any of our colonies, respectively, where such person shall reside, and also give security to observe such regulations as we shall at any time think fit, by ourselves or commissaries to be appointed for this purpose, to direct and appoint for the benefit of the said trade; and we do hereby authorize, enjoin and require the governors and commanders-in-chief of all our colonies, respectively, as well as those under our immediate government, as those under the government and direction of proprietaries, to grant such licenses without fee or reward, taking special care to insert therein a condition that such license shall be void, and the security forfeited, in case the person to whom the same is granted shall refuse or neglect to observe such regulations as we shall think proper to prescribe as aforesaid.

"And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of the Indian affairs within the territories reserved, as aforesaid, for the use of the said Indians, to seize and apprehend all persons whatever, who standing charged with treason, misprision of treason, murder or other felonies or misdemeanors, shall fly from justice and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed, of which they shall stand accused, in order to take their trial for the same."

It is not necessary now to inquire whether the lands to the west of the Rocky Mountains and bordering on the Pacific Ocean, form part of the lands claimed by France, and which, if such claim were correct, would have passed by cession to England, under the Treaty of 1763, or whether the title of England rests on any other ground, nor is it necessary to consider whether that proclamation covered the land now known as British Columbia.

It is sufficient, for the present purposes, to ascertain the policy of England in respect to the acquisition of the Indian territorial rights, and how entirely that policy has been followed to the present time, except in the instance of British Columbia.

It is true, also, that the proclamation of 1763, to which allusion has been made, was repealed by the Imperial Statute 14 George III., chapter 83, known as "The Quebec Act;" but that statute merely, so far as regards the present case, annuls the proclamation, "so far as the same relates to the province of Quebec, and the commission and the authority thereof, under the authority whereof the government of the said province is at present administered," and the Act was passed for the purpose of effecting a change in the mode of the civil government of the administration of justice in the province of Quebec.

The Imperial Act, 1821, 1st and 2nd George IV., chapter 66, for regulating the fur trade, and establishing a criminal and civil jurisdiction within certain parts of North America, legislates expressly in respect to the portion of this continent which is therein spoken of as "the Indian territories," and by the Imperial Act, 1849, 12 and 13 Victoria, chapter 48, "An Act to provide for the administration in Vancouver's Island." The last-mentioned Act is recited, and it is added on recital that "for the purpose of the colonization of that part of the said Indian territories called Vancouver's Island, it is expedient that further provision should be made for the administration of justice therein."

The Imperial Act, 1858, 21 and 22 Victoria, chapter 98, "An Act to provide for the government of British Columbia," recites, "that divers of Her Majesty's subjects and others have, by the license and consent of Her Majesty, resorted to and settled on certain wild and unoccupied territories on the north-west coast of North America, now known as 'New Caledonia,' from and after the passing of the Act to be named British Columbia, and the islands adjacent," etc.

The determination of England, as expressed in the proclamation of 1763, that the Indians should not be molested in the possession of such parts of the dominions and territories of England as, not having been ceded to the King, and reserved to them, and which extended also to the prohibition of purchase of lands from the Indians, except only to the Crown itself—at a public meeting or assembly of the said Indians to be held by the governor or commander-in-chief—has, with slight alterations, been continued down to the present time, either as the settled policy of Canada, or by legislative

provision of Canada to that effect, and it may be mentioned that in furtherance of that policy, so lately as in the year 1874, treaties were made with various tribes of Indians in the North-west Territories, and large tracts of lands lying between the province of Manitoba and the Rocky Mountains were ceded and surrendered to the Crown, upon conditions of which the reservation of large tracts for the Indians, and the granting of annuities and gifts annually, formed an important consideration; and in various parts of Canada, from the Atlantic to the Rocky Mountains, large and valuable tracts of land are now reserved for the Indians as part of their consideration of their ceding and yielding to the Crown their territorial rights in other portions of the Dominion.

Considering, then, these several features of the case, that no surrender or cession of their territorial rights, whether the same be of a legal or equitable nature, has been ever executed by the Indian tribes of the province—that they alledge that the reservations of land made by the Government for their use, have been arbitrarily so made, and are totally inadequate to their support and requirements, and without their assent—that they are not averse to hostilities in order to enforce rights which it is impossible to deny them, and that the Act under consideration not only ignores those rights, but expressly prohibits the Indians from enjoying the rights of recording or pre-empting lands, except by consent of the Lieutenant-Governor;—the undersigned feels that he cannot do otherwise than advise that the Act in question is objectionable, as tending to deal with lands which are assumed to be the absolute property of the province, an assumption which completely ignores, as applicable to the Indians of British Columbia, the honour and good faith with which the Crown has, in all other cases, since its sovereignty of the territories in North America, dealt with their various Indian tribes.

The undersigned would also refer to the British North America Act, 1867, section 109, applicable to British Columbia, which enacts in effect that all lands belonging to the province shall belong to the province, “subject to any trust existing in respect thereof, and to any interest, other than that of the province, in the same.”

That which has been ordinarily spoken of as the “Indian title” must, of necessity, consist of some species of interest in the lands of British Columbia.

If it is conceded that they have not a freehold in the soil, but that they have an usufruct, a right of occupation or possession of the same for their own use, then it would seem that these lands of British Columbia are subject, if not to a “trust existing in respect thereof,” at least “to an interest other than that of the province alone.”

The undersigned, therefore, feels it incumbent on him to recommend that this Act should be disallowed, but suggests that such disallowance be postponed until the last day at which such can take place, with a view of communication on the subject with the Lieutenant-Governor of British Columbia.

It may be anticipated that no practical inconvenience can arise from its disallowance, should such be necessary, as the previously existing Crown Land Act will probably suffice to enable the province to continue, in the meantime, disposal of lands.

The undersigned, whilst commenting on this Act, deems it also expedient to call attention to that provision of the Order in Council under which the province of British Columbia entered confederation, which refers to the conveyance by the province to the Dominion government, in trust, of public lands along the line of the Pacific Railway, throughout the entire length of British Columbia. It may, of course, be argued that there has been no actual commencement, within two years of the date of the Union, of the Canadian Pacific Railway; but having regard to the practical commencement of that work in the surveys which have been made along different portions of the contemplated route, the undersigned deems it his duty to note that no reservations are made in the Act now under consideration, and that, without them, the recording and pre-emption of lands under this Act might be the subject of great embarrassment to the government of Canada, in the construction of the line or in the granting of any contracts for construction of portions of it.

He suggests, therefore, that this is a further subject on which it is desirable that communication should be had with the Lieutenant-Governor of British Columbia.

I concur,

T. FOURNIER,

*Minister of Justice.*

H. BERNARD,

*Deputy Minister of Justice.*



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*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th March, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1875.

The undersigned has the honour to report, with reference to the Order in Council of the 23rd January last, upon the subject of an Act passed by the legislature of the province of British Columbia as to the crown lands of that province, and to the proposed disallowance of that Act, that the time has come when it is necessary to take the step proposed.

The undersigned has, therefore, for reasons stated in that Order in Council, the honour to recommend that the Act of the legislature of British Columbia, passed in the 37th year of Her Majesty's reign, and assented to on the 2nd March, 1874, and intituled: "An Act to amend and consolidate the laws affecting Crown lands in British Columbia," be disallowed by your Excellency in Council.

T. FOURNIER,  
*Minister of Justice.*

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 20th day of March, A. D. 1875, Vol. VIII., No. 38, page 1134.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th March, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th January, 1875.

Upon the Acts passed by the legislature of British Columbia in the 37th year (1874) of Her Majesty's reign, the undersigned has the honour further to report as follows:—No. 4 "An Act to extend the provisions of the 'Coroners' Jury Act, 1866,' to the mainland of British Columbia." This Act extends over the whole of the province of British Columbia—the "Coroners' Jury Act, 1866," passed in the late colony of Vancouver Island.

Having reference to that Act, it is found to give power to any coroner to impanel a jury of not less than six, for the purposes of any inquisition, their powers and verdict being to all intents and purposes as effectual as if found by a jury consisting of twelve or more.

The undersigned is somewhat doubtful whether this may not be a branch of criminal procedure, and as such, within the sole legislative competence of the Parliament of Canada. He does not propose, however, to do more than make this suggestion.

No. 12. "An Act to make better provisions for the Qualification and Registration of Voters."

Section 15 speaks of a conviction of an "offence." This seems to imply a crime and, therefore, a subject of criminal law. In this view, it may be desirable to avoid the use of the word "offence."

H. BERNARD,  
*Deputy Minister of Justice,*

I concur,

T. FOURNIER,  
*Minister of Justice.*

*Mr. Pemberton to the Hon. the Minister of Justice.*

VICTORIA, BRITISH COLUMBIA, 23rd April, 1874.

SIR,—I have the honour to forward herewith, a memorial from the county court judges of British Columbia, with a request from them that you will be good enough to lay it before his Excellency the Governor General. It has been signed by all the judges, except Mr. Saunders, who is absent on leave.

I have, &c.,

A. F. PEMBERTON,  
*County Court Judge.*

*Memorial of the County Court Judges.*

*To His Excellency the Right Honourable the Earl of Dufferin, K.P., K.C.B., Governor General of the Dominion of Canada, &c.*

The humble memorial of the county court judges in the province of British Columbia,—SHOWETH :

That in view of the reference made to his Excellency the Governor General, of the question as to the position and proper duties of the county court judges of British Columbia by the government of this province, and with particular reference to the report (therewith transmitted) of the opinion of the Attorney General on this subject, published in the *Government Gazette* of the 2nd of August, 1873, and further, with regard to the Act of last session, intituled : "The County Courts Extension Act, 1874," the county court judges deem it due to themselves to make the following representations, which they beg most respectfully to submit for the consideration of his Excellency the Governor General :—

That the services in the colony averaged over twelve years before the Confederation of the province with the Dominion, in July, 1871, as has been most particularly detailed in reports from each county court judge, forwarded by his Honour the Lieutenant-Governor to the Secretary of State for the Provinces, in 1872 ;

That Confederation was purely a government measure, and that the above officers formed a large proportion of the members of the legislative council ; that without their votes that measure could not have been passed ; that they were led to vote for that measure solely at the instance of the then governor, Mr. Musgrave, on the distinct and repeated assurance from him, as the representative of the Queen, that under the terms of confederation they would be placed in the permanent service of the Dominion government as county court judges, and be totally independent of, and without the control of the provincial government ;

That Mr. Musgrave further assured them that in the event of their positions being filled by barristers, pensions, at the rate of two-thirds of their salaries, or appointments of equivalent positions and emoluments would be granted to them ;

That a memorial from these officers to the Secretary of State was withdrawn, after repeated assurances having been given to them by Governor Musgrave to the above effect ;

That Mr. Musgrave stated to your memorialists that, in his despatch of the 22nd November, 1870, to the Dominion government, he had distinctly laid down the position to be held by the county court judges after union to the above effect, and that the same had been confirmed by the Secretary of State for the Colonies, Lord Kimberley, as binding on the Dominion government, in his despatch of the 3rd of June, 1871 ;

That Mr. Musgrave told them that they might be expected to continue for a while to perform the various duties hitherto discharged by them in their respective districts, during the transition of the provinces from the colonial to the provincial

system of government, and in the session of 1872 provision was accordingly made for the appointment of certain officers, entitled clerks of the bench, and that such officers, were, in the spring of that year, appointed, and relieved the county court judges from their local functions, taking over their books of account, cash balances, &c. ;

That they were always informed that the Dominion government objected to their officers doing local work ;

That the other officers whose positions were affected by confederation had the option of retiring or taking office under the Dominion, whereas the county court judges had no such opinion ;

That, in regard to the County Court Extension Act, 1874, they respectfully submit that, under section 92, subsection 15, of the British North America Act, 1867, the local legislature had not jurisdiction to pass a measure authorizing the local government to require that any particular county court judge should reside in any particular place, or even that he should hold any particular court, inasmuch as all are county court judges having jurisdiction over the entire province.

If the local legislature have the power to which they lay claim, it would follow that they have in substance power to appoint that any of the county court judges of the province, shall be the county court judge for a particular district, a power of appointment which belongs alone to the Governor General ; and an inspection of section 92, subsection 14, and section 96 of British North America Act, shows that the local legislature have jurisdiction only over courts, but have no authority in reference to the appointment of the judges who sit in those courts ; it may be that such power of control by the local government over the individual judges of the county court carrying with it the power of rewarding such judges as may be favoured by the Ministry, of the day, by transferring them to more agreeable or advantageous posts, or visiting displeasure upon others by ordering them to the more rugged and inhospitable districts of the interior, thus assuming, in fact, a patronage, which cannot be properly intended to be conferred on them, is incompatible with a continued faithful and unbiassed discharge by the county court judges of their judicial functions ;

That such power would in no way secure a more efficient performance of the county court business, or afford any further facilities to suitors than are already given ; the only effect intended to be obtained would seem to be the presence of county court judges in the more remote parts of the province to afford moral support to the maintenance of law and order, a responsibility specially attached to the provincial government, but of which they would thus be relieved at the expense of the Dominion ;

That in many instances it will be difficult for a county court judge to discharge his duties with satisfaction to the Dominion government, if, at the same time, he is subject to the order of the Lieutenant Governor, as regards local duties, even as representing the federal authority ; that officer may find himself in the anomalous position of having to refuse to act on the advice of his responsible ministers in the often recurring case of the county court judge being asked to discharge local duties, which they may consider incompatible with their federal duties. It is needless to observe that there will be a constant tendency in a local government, for their own convenience, to require such officers to discharge duties, by no means compatible with the position of a county court judge.

That it is submitted, in no other instance, and in no portion of the Dominion, can a federal officer be asked to discharge merely local duties, and the late government of British Columbia made provision for the discharge of the local duties accordingly, by the appointment of clerks of the bench.

And your memorialists, as in duty bound, will ever pray, &c.

HENRY MAYNARD BALL,  
JAMES R. SPALDING.

A. F. PEMBERTON,  
P. O'REILLY,  
ARTHUR T. BUSHBA,

VICTORIA, BRITISH COLUMBIA,  
23rd April, 1874.



*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th March, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 9th March, 1875.

Upon an Act passed by the legislature of British Columbia on the 2nd March 1874, chapter 9, intituled: "An Act to make provision for the better administration of justice," the undersigned has the honour to report:—

That this Act enables the Lieutenant-Governor in Council from time to time, to appoint the times and places at which county courts shall be held, and to order any county court judge to hold such court, at such times and places as may be appointed, and to appoint the places at which such county court judge shall reside from time to time. A petition is presented against this Act by the several county court judges. The petition sets forth at length the circumstances connected with their position.

It is not, however, necessary to enter upon the consideration of the statements further than upon the following point:—The petitioners submit that under section 92, subsection 14, of the British North America Act, 1867, the local legislature had not jurisdiction to pass a measure authorizing the local government to require that any particular county court judge should reside in any particular place, or even that he should hold any particular court, inasmuch as all are county court judges, having jurisdiction over the entire province.

They further allege that that Act, in substance, confers on the local legislature power to appoint any county court judge for a particular district, a power of appointment which belongs alone to the Governor General, and that any such power of control by the local legislature carries with it the power of rewarding such judges as may be favoured by the ministry of the day, by transferring them to more agreeable posts, or visiting displeasure upon them, by ordering them to the inhospitable districts of the interior; all which is incompatible with a continued faithful and unbiassed discharge by the county court judges of their judicial functions.

They urge that in no other portion of the Dominion, can a federal officer be asked to discharge merely local duties.

The question, therefore, for consideration is as to the competency of the legislature of British Columbia to pass the law to which reference is now made.

The position of the county court judges appears to be this:

An ordinance was passed in 1867, under which the Governor of British Columbia might appoint any stipendiary magistrate or justice of the peace in the colony, to be a county court judge, either for the whole colony, or for such parts thereof as he shall from time to time in that behalf direct or appoint; a provision which was repealed by "the County Court Judges Appointment Act, 1872," but which repeal does not affect the county court judges in question, or their jurisdiction.

In a despatch of March, 1872, Lieutenant-Governor Trutch stated that an address of the assembly asked him to move the government of Canada, to appoint, barristers or other legal men as county court judges, in place of the then incumbents of those offices, who were not professionally qualified, and the minute of the executive council asked the Dominion government to appoint not less than three competent county court judges for the province as soon as practicable.

In November, 1872, Lieutenant-Governor Trutch alluding to an Act just then passed, called "the County Court Judges Appointment Act, 1872," expressed the views of his government, that the province should be divided into five county court districts, as defined in the minute and map of British Columbia, which was inclosed, and that a duly qualified member of the legal profession should be appointed for each such district.

No action however was taken upon it, the division of county court districts not being the duty of Canada.

The condition of matters as existing, prior and up to confederation, has since been and still is in force, except as modified by the local Act of 1872.

In 1876, the Civil List Act of Canada was amended by 35th Vic., chap. 3, which provided for the salaries in respect of these stipendiary magistrates or county court judges, as follows; the sums being those of which they were in receipt as their annual salaries at the time of confederation, namely:—

One stipendiary magistrate for	Victoria.....	\$2,250	per annum
“	“	New Westminster....	2,425 “
“	“	Cariboo.....	3,400 “
“	“	Yale.....	3,000 “
“	“	Lillooet and Clinton..	2,400 “
“	“	Nanaimo and Coast...	2,250 “

so long as each of the stipendiary magistrates, respectively, retains the office of county judge.”

An Act now under consideration has three features :

1st. That the Lieutenant-Governor in Council may from time to time appoint the times and places at which county courts shall be held, and may,

2nd. Order any county court judge to hold such court, and at such time and places as may be appointed, and

3rd. May appoint the places at which such county court judge shall reside from time to time.

To the first of these, there appears to be no objection; it concerns the administration of justice, and is part of the constitution of a provincial court, and, therefore, within local legislative competence.

As to the second, it may be remarked that so long as the county court judges, as is the case with the present incumbents, have jurisdiction over the whole of the province, there can be no objection to the temporary performance of duties, by the Judge assigned to one district, of those of another district; but unless any special and good cause be shown to the government of Canada, for such temporary transfer of duty, the undersigned considers that the Dominion cannot be required to pay travelling expenses so incurred.

It may, however be doubted whether the words “any county court judge” would be applicable to any future appointments, which would probably be made for special districts, when laid out by the local government.

The Act under consideration must always be viewed in respect to travelling allowances.

No fixed sum has been set apart for such purposes, but such as have been incurred, have been paid.

The subject of these travelling allowances will form, it is proposed, the subject of a separate memorandum, but the undersigned may here remark that he is of the opinion that such should be guided by this rule, viz., that, taking the name of the judge in connection with the district for which he was acting as judge at the time of the union, with reference also to his place of residence in such district, or, if not resident therein, then that of such place as would reasonably be his place of residence, travelling allowances be given, as from thence to the courts in his district, either at a fixed scale per diem, or an annual sum.

As to the third point, the undersigned feels much difficulty. The appointment of a judge is vested in the Governor General. To authorize such an appointment, there must be a duly constituted court, or due provisions made for the administration of justice, and these may, by local enactment, from time to time, be varied.

As to the position of these county court judges at the time of confederation, they appear to stand as follows :—

Name.	Date of Appointment.	Name of present District.	Salary.
			\$ cts.
A. T. Bushby .....	April, 1870..	New Westminster .....	2,425 00
W. R. Spalding .....	June, 1867..	Nanaimo and Comox .....	2,250 00
T. O'Reilly .....	do 1871..	Northern Gold Mines, to Omimica (i.e. Yale) .....	3,000 00
A. T. Pemberton.....	do 1858..	Victoria .....	2,250 00
A. E. H. Saunders.....	do 1859..	Lillooet .....	2 400 00
H. M. Ball .....	do 1870..	Cariboo. ....	3,400 00

By reference to the Act of Canada of 1872, 35 Vic., chap. 20, salaries were assigned in different proportions to the stipendiary magistrates (otherwise county court judges) for certain districts by name, being thus above mentioned.

It appears, therefore, that the county court judges, though, having under their original appointment, jurisdiction over the whole province, have been hitherto assigned and appointed to certain specific districts, being in fact the electoral districts of the province.

So long, therefore, as there is no legislation by British Columbia altering the limits of these particular districts, the undersigned is of opinion that the position of these gentlemen as county court judges (so called) is unaltered from that at the time of confederation.

Being now, therefore, in effect county court judges for particular districts, the undersigned is of opinion that the third provision of the act, authorizing the Lieutenant-Governor to appoint the places at which such county court judges shall reside from time to time, is practically assuming a power of appointment of judges, and he advises that the Act of the legislature of the province of British Columbia passed on the 2nd of March, 1874, intituled, "An Act to make provision for the better administration of justice," be, therefore, disallowed by your Excellency in Council.

T. FOURNIER,  
Minister of Justice.

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette on the 16th day of March, 1875, Vol. VIII., No. 39, page 1160.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th March, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 9th March, 1875.

Upon a petition presented by several county court judges of British Columbia, praying for the disallowance by the Governor General of an Act passed by the legislature of that province on the 2nd March, 1874, intituled : "An Act to make provision for the better administration of justice";

The undersigned is of opinion that, upon due consideration of the circumstances of the case, the condition of the county judges is in no way changed by confederation, except in that their duties have been diminished.

At the time of confederation, in addition to the duties attached to the office of county court judge, they appear to have acted as gold commissioners and Indian agents,



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in respect of which two latter offices they have not since been called upon to act, and it seems not improbable that there were other duties imposed upon them, which they do not now fulfil.

The undersigned cannot see, therefore, that in this respect the county court judges have any reason for complaint.

But in respect to the provision of the Act in question which gives the Lieutenant-Governor power to appoint the places, at which such county court judge shall reside from time to time, the undersigned, in a report upon the Act itself, has expressed the opinion that, as there are now in effect six particular districts, the third provision of the Act in question is practically assuming a power of appointment of judges, and he has therefore recommended that the Act should be disallowed.

He recommends that the contents of this memorandum be communicated to Mr. Pemberton, acting on behalf of the county judges.

T. FOURNIER,  
*Minister of Justice.*

## BRITISH COLUMBIA—38TH VICTORIA, 1875.

## 4TH SESSION, 1ST PARLIAMENT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 26th October, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th October, 1875.

Upon the Acts passed by the legislature of the province of British Columbia, and assented to by the Lieutenant-Governor on the 22nd April, 1875, the undersigned has the honour to report that the right of disallowance ought not to be exercised in respect to the following Acts, and he, therefore, recommends that they be left to their operation, viz., chapters 1, 3, 4, 5, 7 to 12, 14 to 17 and 19.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 10th November, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th October, 1875.

With reference to the Act passed by the legislature of British Columbia, assented to 22nd April, 1875, intituled: cap. 5. "An Act to amend and consolidate the laws affecting Crown lands in British Columbia," the undersigned has the honour to report that this Act is identical with that passed by the same legislature, and assented to on the 2nd March, 1874, under the same title with the following exceptions:

1st. It repeals the Land Act of 1874;

2nd. The definition of crown lands is altered, the words "in fee simple" being substituted for the words "in free and common socage";

3rd. The 60th section provides as follows:—

"The Lieutenant-Governor in council shall at any time, by notice signed by the Chief Commissioner of Lands and Works, and published in the *British Columbia Gazette*, reserve any lands not lawfully held by record, pre-emption, purchase, lease or Crown grant, for the purpose of conveying the same to the Dominion Government, in trust, for the use and benefit of the Indians, or for railway purposes as mentioned in article 11 of the terms of union, or for such other purposes as may be deemed advisable;" in lieu of the same section of the former Act which reads as follows:—

"The Lieutenant-Governor in Council shall, at any time and for such purposes as may be deemed advisable, reserve, by notice published in the *British Columbia Gazette*, any lands not lawfully held by record, pre-emption, purchase, lease or crown grant."

4th. The provision in the former Act as to the Act not coming into force until proclamation.

The undersigned begs leave to refer to the approved report of his predecessor upon the subject of the former Act, dated 19th January, 1875, upon which, by Order in Council, dated 11th March 1875, the Act was disallowed.

The grave questions arising in that report, and those under discussion between the two governments as to the mode of dealing with the Indians, are still unsettled; and it appears to the undersigned that the alterations made in this Act are not such as to meet the difficulties which resulted in the disallowance of the former Act.

It may perhaps be hoped that before the time within which the power of disallowance must be exercised, this question will be settled; but should that be otherwise, it appears to the undersigned, that the policy and line of agreement, which led to the disallowance of the former Act, must lead to the disallowance of this one also.

The undersigned recommends that, beyond the communication of the views of Council to the government of British Columbia, no action should be taken in reference to this Act, until the last day at which disallowance may take place.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th January, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th January, 1876.

Upon an Act passed by the legislature of the province of British Columbia, assented to on the 22nd April 1875, chapter 18, intituled: "An Act to make powers of attorney valid in certain cases," the undersigned begs to report:—

This Act recites that "difficulties frequently arise as to titles to lands and other property, by reason of its conveyances, or other instruments, and Acts effecting the the same," in certain cases.

After dealing with these cases, and providing for the registration generally of powers of attorney, of declarations of the death, bankruptcy, insolvency or marriage of the principal or the revocation of any such power of attorney, the 7th section provides that "any person who shall wilfully efface, deface, mutilate or destroy any power of attorney, declaration or notice, respectively, which shall have been filed under the provisions of this Act, shall, upon conviction thereof, be imprisoned with or without hard labour, for any term not exceeding two years."

This section appears to trench upon the provisions of the criminal law, and the undersigned suggests that the attention of the government of British Columbia should be invited to this difficulty, with a view to their considering whether the Act should not be amended before the period arrives for determining as to its disallowance.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 16th October, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th October, 1875.

Upon an Act passed by the legislature of British Columbia, on the 22nd April, 1875, chapter 5, intituled: "An Act to make provision for the better administration of Justice," the undersigned has the honour to report, that this Act enables the Lieutenant-Governor in council to divide the province into as many districts as he may think fit, such districts to be called county court districts, and to define the boundaries thereof, and from time to time to alter and vary the same, and from time to time to appoint the times and places at which county courts shall be held in such districts.

An Act upon the same subject was passed by the same legislature on the 2nd March, 1874, and disallowed under an approved report by the predecessor of the undersigned, dated 9th March, 1875. To that report the undersigned refers.

It appears to the undersigned to be important that the province should be divided for the purposes of county courts, into districts, but having regard for the views expressed in the said approved report, and considering that the consequence of permitting the Act now under consideration to go into operation, would be to permit the Lieutenant-Governor in Council to arrange the boundaries of these districts and to alter them at his pleasure, and so practically to determine at his pleasure the places within which the county court judges should have jurisdiction. It appears to the undersigned that the Act is objectionable, as the alterations thereby authorized might practically result in the appointment by the local government, of a county court judge to a new district or judgeship, thus transferring to the local government a part of the power of appointment vested in



this government under the constitution. So long as the local legislature keeps within its own hands the division of the districts and the alteration of their boundaries, this government has, by virtue of the power of disallowance, some measure of control over such action; but should this Act go into operation, no such control could thereafter be exercised here.

The undersigned has been led to believe that it may be important in the peculiar circumstances of the country, to make provision for the holding of courts at places where, owing to the influx of miners and others, a population is suddenly brought together, and, in this view, he thinks it would not be objectionable that the local legislature should give power to the Lieutenant-Governor in council from time to time, to appoint the times and places at which the county courts shall be held in the districts.

The undersigned recommends that it should be suggested to the Government of British Columbia to repeal the Act, and to effect any division of the province into districts, and any definition of the boundaries of such districts, which they may think desirable, by legislation, instead of by the machinery proposed by the Act.

EDWARD BLAKE,  
*Minister of Justice.*

*Lieutenant-Governor Trutch to the Hon. the Secretary of State of Canada.*

GOVERNMENT HOUSE, BRITISH COLUMBIA, 27th April, 1876.

SIR,—I have the honour to inclose herewith a minute of my executive council, together with a transcript of a telegraphic despatch which, in accordance therewith, I have this day addressed to you in reply to your telegram to me of the 13th April, and stating the views of this government as to the several Acts of the last session of the legislature of this province therein referred to.

I have, &c.,

JOSEPH W. TRUTCH,  
*Lieutenant-Governor.*

*Report of a Committee of the Honourable the Executive Council, approved by His Honour the Lieutenant-Governor in Council on the 20th day of April, 1876.*

Referring to the telegram from the Secretary of State for Canada of the 13th inst., submitted by your Excellency for consideration in executive council, the committee of council respectfully request that you will be pleased to reply thereto by telegraph to the following effect :—

“That this government concurs in the disallowance of the ‘Act for the better Administration of Justice’; that the general question involved therein is under consideration, and if time admit, a bill reorganizing the system will be submitted to the legislative assembly.

“That the objections to the Act, amending the Crown Lands Act, are considered to be removed by the agreement for the settlement of the Indian land question by commissioners, and that the Power of Attorney Act will be immediately amended so as to remove objections to section 7.”

T. BASIL HUMPHREYS,  
*Minister of Finance and Clerk of Executive Council.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th May, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th April, 1876.

With reference to the Acts of British Columbia assented to on the 22nd April, 1875, the time for action upon which will expire on the 8th May next, the undersigned begs to report as follows :

1. By minute in council of the 16th October, 1875, the report of the undersigned upon the Act chapter 5, intituled: "An Act to make provision for the better Administration of Justice," was approved.

A copy of that minute was transmitted to the Lieutenant-Governor of British Columbia.

The views of the government of British Columbia not having been communicated to his Excellency, the Secretary of State recently asked for a telegraphic communication upon the subject.

By telegraph, dated 27th April, from the Lieutenant-Governor to the Secretary of State, he is informed that the government of British Columbia concurs in the disallowance of the Act for the better Administration of Justice; that the general question involved therein is now under consideration, and a bill reorganizing the system will, if time admit, be submitted to the legislature.

The report of the undersigned proposed that it should be suggested to the government of British Columbia to repeal the Act, and to effect the division of the province into districts, &c., by legislation, instead of by the machinery proposed by the Act.

As the provincial government suggests the exercise of the power of disallowance, and it is not certain whether amendatory legislation will be held this session, the undersigned recommends that the said Act be disallowed.

2. By minute in council of the 10th November, 1875, the report of the undersigned upon the Act, intituled: "An Act to amend and consolidate the Laws respecting Crown Lands in British Columbia," was approved.

The same steps were subsequently taken upon this subject, as those detailed with reference to the subject treated of in the first paragraph.

The Lieutenant-Governor's communication upon this Act states that the objections taken by council to it are considered to be removed by the agreement for a settlement of the Indian land question by commissioners.

Although the undersigned cannot concur in the view that the objections taken are entirely removed by the action referred to; and, though he is of opinion that, according to the determination of council upon the previous Crown Lands Act, there remains serious question as to whether the Act now under consideration is within the competence of the provincial legislature, yet since, according to the information of the undersigned, the statute under consideration has been acted upon, and is being acted upon largely in British Columbia, and great inconvenience and confusion might result from its disallowance; and, considering that the condition of the question at issue between the two governments is very much improved since the date of his report, the undersigned is of opinion that it would be the better course to leave the Act to its operation.

It is to be observed that this procedure neither expresses nor impliedly waives any right of the government of Canada to insist that any of the provisions of the Act are beyond the competence of the Local Legislature, and are consequently inoperative.

The undersigned recommends that the Act be left to its operation.

3. By minute in council of the 7th January, 1876, the report of the undersigned respecting an Act, intituled: "An Act to make Powers of Attorney valid in certain cases," was approved.

The same steps were subsequently taken upon this subject as those detailed with reference to the subjects treated of in the first paragraph.

The Lieutenant-Governor's communication upon this Act states that it will be immediately amended, to remove the objections taken to section 7, which was the only clause objected to. Upon this assurance of the government of British Columbia, the undersigned recommends that the Act be left to its operation.

EDWARD BLAKE,  
*Minister of Justice.*

*Order in Council disallowing the Act above mentioned published in the Canada Gazette on the 6th day of May, 1876, Vol. IX., No. 45, page 1477.*

## BRITISH COLUMBIA, 39TH VICTORIA, 1876.

## 1ST SESSION—2ND PARLIAMENT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th November, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th October, 1876.

With reference to the Acts of the legislature of British Columbia, passed in the first session of the second legislature, 39th Victoria, 1876, the undersigned begs to report as follows, viz., chapters 4, 6, 7, 9, 10, 13 to 29. He recommends that these be left to their operation.

With reference to chapter 1. "An Act to amend the Municipality Act, 1872, and Amendments thereto."

This Act contains several provisions with reference to licenses, with respect to which the power of local legislatures is in controversy.

The undersigned recommends that the course hitherto pursued should be continued, and the Act left to its operation.

Chapter 2. "An Act to amend and consolidate the 'Public Schools Acts.'"

Section 43, both by the character of the Acts with which it deals, and by the term which applies to these Acts, namely, "offences," appears to trench upon the criminal law, and the undersigned recommends that the attention of the Lieutenant-Governor should be called to this section, with a view to its amendment.

Chapter 3. "An Act to provide for the maintenance of the Wagon Road from Yale to Cariboo."

This Act repeals the "Tolls Exemption Ordinance, 1865;" the "Tolls Exemption Ordinance, 1865, amendment Act;" the "Tolls Exemption Act, 1871;" the "Thompson Bridge Act, 1864," and the "Thompson Bridge Ordinance, 1868."

It establishes a toll of half a cent for every pound avoirdupois of goods, merchandise, stores, productions and chattels, other than those hereinafter excepted, which shall respectively be carried over or across the Alexandra Suspension Bridge or the Fraser River, within a distance of ten miles from the bridge, or carried from Clinton in the direction of Cariboo.

The 3rd section exempts from tolls, goods, merchandise, stores, productions or chattels passing over the bridge, from the direction of Cariboo towards Yale. It exempts, also, mining machinery, farming implements, wheat, beans, pease, oats, barley and grain of all kinds, hay, roots, vegetables and other agricultural produce, the growth of the province, and all flour and meal manufactured in the province from wheat, beans, peas, oats, barley and grain of all kinds grown in the province, and all cattle, and all articles and things coming in the direction of the seaboard from the interior of the province, whether intended for export or home consumption, for the purpose of manufacture in the province, or any other purpose whatsoever.

The repealed ordinance, 1865, exempted from road and ferry tolls in British Columbia, on the ground that it was expedient to exempt agricultural produce of home growth from road tolls, all agricultural produce in an unprepared state, the growth of the colony.

The repealed ordinance of 1871 extended the exemption to flour and meal manufactured from grain of all kinds, the growth of the colony.

The repealed exemption ordinance of 1871 recited that it was desirable to encourage the transmission of articles of export from the interior of the colony, and exempted all articles and things coming in the direction of the seaboard from the interior, whether intended for export or home consumption, or for any other purpose, from liability to tolls.



It is obvious, therefore, that the Act now under consideration is in furtherance of a policy which has been pursued in British Columbia for several years; but the undersigned feels it his duty to call the attention of council to this legislation, which, in effect, places upon the consumers of imported goods, the chief burden of maintaining the public roads which are established, as well for the transport of articles of home production.

The undersigned does not recommend the disallowance of this Act, but he must point out that its principle might be so extended, as to render it necessary to consider the question whether such legislation does not trench on the regulation of trade and commerce.

Chapter 5. "An Act to make better provision for the qualification and registration of voters."

Section 13 appears to trench upon the criminal law, and the undersigned recommends that the attention of the Lieutenant-Governor be called to it.

Chapter 8. "An Act to assess, levy and collect taxes on property in British Columbia."

The British Columbia Assembly passed, in its session of 1872, an Act to impose a wild land tax, which was reserved. Upon that Act the following observations were made by the then Minister of Justice, viz. :—

"This Act imposes a tax of four cents per acre upon all lands, with certain exceptions.

"By subsection *a* of the first clause of this bill, lands vested in or held in trust for Her Majesty, or for the public uses of the province, are exempted from the tax. Although, under this exemption, the lands to be conveyed in trust by the government of British Columbia to that of the Dominion, under the 11th section of the terms of the union between British Columbia and the Dominion, will be free from the tax, it is clear that whenever these lands are conveyed to any company incorporated for the purpose of the construction of the Pacific Railway, the exemption will cease.

"Now, the imposition of so heavy a tax as 4 cents an acre upon this large tract of wild lands, will render it practically valueless.

"The government of Canada are taking active steps to endeavour to induce capitalists to engage in the great undertaking of constructing a railway to connect the two oceans. The chief inducement to such capitalists is the promise of a large grant of land in aid of the enterprise, and the imposition of such a tax upon these railway lands, would greatly diminish the prospect of a company being formed."

"The Attorney General of British Columbia seems to agree with the undersigned in this opinion. Under the circumstances, therefore, the undersigned begs respectfully to recommend that the assent of your Excellency be withheld from this bill.

"He also begs leave to suggest that the Lieutenant-Governor of British Columbia be instructed to press upon his government the expediency of exempting these railway lands in any Act that may be hereafter passed imposing a land tax.

"He would further suggest, to prevent the possibility of a doubt, that subsection *a*, above referred to, should, in any new Act, be amended, by exempting lands now or at any time hereafter vested in, or held in trust for Her Majesty."

The Act was not assented to.

In 1873 the British Columbia legislature passed an Act to impose a wild land tax, by which an annual land tax of 1 per cent upon the value per acre, was assessed and levied upon all land, save as therein exempted. The first exemption is "land now or at any time hereafter vested in or held in trust for Her Majesty, or for the public uses of the province."

This Act was left to its operation. It is, by the Act now under consideration, repealed, and the following provisions are enacted :—

Section 8. "All land and personal property and income, in the province of British Columbia shall be liable to taxation, subject to the following exemptions, that is to say :—

(1.) All property now or hereafter to be vested in, or held in trust for Her Majesty, or now or hereafter to be held as Dominion railway lands, and all lands to be conveyed to the Dominion government under the 11th section of the terms of union, or other-

wise, or held by Her Majesty, or vested in any public body or body corporate, officer, or person, or in trust for Her Majesty, or for the public uses of the province; and also all property vested in or held by Her Majesty, or any other person or body corporate, in trust, or for the use of any tribe or body of Indians, and either unoccupied or occupied by some person in an official capacity.

Section 9. "There shall be assessed, levied and collected from every person, and paid to Her Majesty, her heirs and successors, the sums following, that is to say:—

"One-third of one per cent on the assessed value of real estate.

Section 10. "In addition to the tax hereby imposed on real estate, an annual tax of five cents per acre shall be levied upon all unoccupied land in the province; provided that no such tax shall be levied or collected in respect of the following land:—

(2.) "Land now, or at any time hereafter, vested in, or held in trust for Her Majesty, or for the public uses of the province.

(3.) "Land held for the benefit of any tribe or body of Indians."

The words "unoccupied land" mean land on which there shall not be existing improvements to the amount of \$5 per acre on each parcel of land.

It will be observed that the exemption from the fixed tax of five cents on unoccupied land, is not as extensive as the exemption from the tax on the assessed value; and it might be argued to include lands "held as Dominion railway lands, or to be conveyed to the Dominion government under the 11th section of the terms of the union," which are exempted from the operation of the 8th section.

The undersigned presumes that this cannot have been intended, and he suggests that the attention of the Lieutenant-Governor be called to this difficulty, with a view to the amendment of the section, before the period arrives for determining whether the Act should be disallowed.

Section 38 appears to trench upon the criminal law, and this fact should be suggested to the Lieutenant-Governor.

Section 13, schedule B. These provisions trench on the subject of census and statistics; but provincial legislation of a similar character has been repeatedly left to its operation, and the undersigned cannot recommend interference with this Act on that ground.

Chapter 11. "An Act to amend the 'Licenses Ordinance, 1867.'"

The Licenses Ordinance, 1867, prohibited the carrying on of various descriptions of business, save under licenses, for which various sums were payable. The Act now under consideration provides that certain licenses must be taken out, in addition to the licenses required to be taken out by the persons following the several trades, occupations, professions or businesses mentioned, and set forth in schedule A of the License Act, 1867.

The continuing validity of that ordinance is asserted, though the question whether it be wholly valid, depends upon the question as to the regulation of trade, to which the undersigned has referred as in controversy.

But the new Act raises an additional and very serious question. It requires that there shall be paid, by way of license, the following sums, that is to say:—

(p.) "By every person following the occupation of a commercial traveller, who is not a permanent resident of the province, and is engaged in the business of selling merchandise, or of soliciting orders therefor by sample or otherwise, the sum of two hundred dollars, in advance, every year.

(q.) "By every person, not being a permanent resident in British Columbia, and not being a commercial traveller, who trades or sells any goods whatsoever in the province, one hundred and fifty dollars, in advance, every year. Provided, that in the electoral district of Kootenay the sum of one per cent only shall be paid by any person engaged in the business of packing, on the gross value of the cargo.

(r.) "By every person engaged in peddling or hawking any goods whatsoever in any part of British Columbia, not being farming produce of home growth, or home manufacture of any description, or fish or game, one hundred and fifty dollars, in advance, every year."

It further requires that these sums shall be paid, in addition to any sums that may be imposed and collected by any municipality under any by-law passed for the same purposes.

Looking to the three sections, it seems sufficiently obvious that they are directed to, and will have the effect of laying a duty or charge upon the sale, chiefly, if not exclusively, of imported goods, when effected by persons not permanent residents of the province.

Section "r" expressly imposes a tax of \$150 on persons engaged in peddling or hawking any goods, not being farming produce of home growth, or home manufacture, or fish or game.

Section "q" imposes a tax of \$150 on every person, not a permanent resident in the province, who trades or sells any goods whatsoever in the province. This section is not, in terms, confined to imported goods, but it is obvious that its practical application would be chiefly to these goods. In the district of Kootenay, 1 per cent on the gross value of the cargo is substituted for the fixed tax.

Section "p" imposes a tax on every person following the occupation of commercial traveller, not a permanent resident in the province, engaged in the business of selling merchandise or of soliciting orders, by sample or otherwise, and this tax obviously, both from the description of the person and of the business, and from the circumstances of the country, applies to imported goods when sold by particular persons. The unequal and discriminatory character of these taxes, and their injurious effect in the regulation of trade and commerce, are very obvious.

The Act further recognizes the power of municipalities to pass by-laws for the imposition of taxes to an indefinite amount for the same purposes.

Besides the express provision of the British North America Act, vesting exclusively in Canada the regulation of trade and commerce, it is to be observed that that Act vests in that parliament the legislation on duties, customs and excise, and the funds produced thereby.

It also provides that, "all articles of the growth, produce or manufacture of any one of the provinces shall, from and after the union, be admitted free into each of the other provinces."

The local Act now under consideration appears to the undersigned, by reason of its peculiar provisions, both as to the classes of persons and the description of trade subjected to taxation, to involve an attempt to regulate trade and commerce in excess of the powers of a local legislature, opposed to the spirit of the Union Act, in violation of sound principles of taxation and of mischievous tendency, and he recommends that the attention of the Lieutenant-Governor be called to it, with a view to ascertaining whether the local government will agree that it should not be forced until the next session of the legislature, and that legislation will then be promoted for its repeal; otherwise, that it should be disallowed.

Chapter 12. An Act to further amend the "Licenses Ordinance, 1867."

This Act enacts that, in addition to the sums required to be paid by way of license in the Act recited, there shall be paid by every drover, driving or bringing cattle, horses, sheep or hogs into the province, a license of \$150 every six months, in advance.

The observations made with reference to chapter 11 apply to this Act, and the undersigned recommends that the same course be pursued with reference to it.

Chapter 24. An Act to amend the "Power of Attorney Act, 1875."

This Act amends the 7th section of the recited Act, by substituting for hard labour for the term of two years, any term not exceeding eighteen months. The recited Act was one upon which the undersigned, on the 5th January, 1876, reported, pointing out that this section trenching upon the provisions of the criminal law, and suggesting that the attention of the government of British Columbia should be invited to this difficulty, with a view to their considering whether the Act should not be amended, before the period arrives for determining as to its disallowance.

In answer to a subsequent application made to the government of British Columbia as to their views, the Lieutenant-Governor stated that the Act would be



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immediately amended, to remove the objection taken to this section, and upon this assurance of the government of British Columbia, the undersigned recommended that the Act should be left to its operation, which was accordingly done.

It is, however, to be observed, that notwithstanding the alteration of the penalty of two years, with or without hard labour, to eighteen months, with or without hard labour, the section is still an invasion of the criminal law, and the undersigned recommends that the attention of the Lieutenant-Governor should be called to the propriety of inviting its amendment.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th May, 1877.*

DEPARTMENT OF JUSTICE, OTTAWA, 22nd May, 1877.

Referring to the report of the Minister of Justice, of the 11th of October last, upon the Acts of the legislature of British Columbia passed in the session of 1876, I beg to report:—

That in accordance with the suggestion contained in that report, chapter 8 of those Acts has been amended, so as to remove the objection referred to in the report, and chapters 11 and 12 have been repealed.

I therefore recommend that the said chapter 8 be left to its operation.

A. J. SMITH,  
*For the Minister of Justice.*

## BRITISH COLUMBIA, 40TH VICTORIA, 1877.

2ND SESSION—2ND PARLIAMENT.

*Lieutenant-Governor of British Columbia to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, BRITISH COLUMBIA, 10th May, 1877.

SIR,—I have the honour to transmit to you herewith, for the information of his Excellency the Governor General of Canada, a certified copy of all the Acts passed at the last session of the legislative assembly of this province, and to which I assented in Her Majesty's name, on the 18th day of April last.

Also a certified copy of a bill No. 35 passed at the said session, intituled: "An Act to amend the Gold Mining Amendment Act, 1872," to which I did not assent, but which I reserved for the signification of the pleasure of his Excellency the Governor General of Canada.

Also, a copy of the report of the Attorney-General of the province upon the said bill reserved, together with a list of the said Acts and bills.

I have, &amp;c.,

A. N. RICHARDS,  
*Lieutenant-Governor.*

*Report of Hon. Mr. Attorney-General Elliott.*

ATTORNEY-GENERAL'S OFFICE, 16th April, 1877.

SIR,—I have the honour to report upon an Act passed during the present session of the legislature, intituled: "An Act to amend the Gold Mining Amendment Act, 1872." This Act gives jurisdiction in all personal actions to the gold commissioners in Kootenay and Cassiar, and appears to trench upon the provisions of the 96th section of the British North America Act, which vests the appointment of the supreme and county court judges in the Governor General alone; inasmuch as it provides that the paid employes of the local government, in the districts aforesaid, shall have and exercise almost as much power as a supreme court judge.

As I think the legislature has not the power, in effect, to make these appointments, I would suggest that the Act be reserved for the consideration of his Excellency the Governor General.

I have, &amp;c.,

A. C. ELLIOTT,  
*Attorney-General.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 12th October, 1877.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th September, 1877.

I beg to report upon the Acts passed by the legislature of the province of British Columbia in the fortieth year of Her Majesty's reign, being the year 1877—received by the Secretary of State on the 22nd May, 1877.

Nos. 1 to 4, 7, 8, 12, 16, 17, 20, 21, 23, 25 to 29, 31 and 34.

To these Acts there appears to be no objection, and I recommend that they be left to their operation.

No. 5.—“An Act respecting the qualifications for the Offices of Mayor and Councillors in certain Municipalities.”

Section 4 provides that “any candidate wilfully making a false declaration of his qualification for the office of city councillor or mayor shall, on conviction thereof, upon information under oath, in a summary way, before any justice of the peace, be liable to imprisonment for any period not exceeding three months, or to a fine, &c.”

Section 6 provides that certain persons “making a false declaration of the matter herein required to be declared before a judge, &c., shall be punishable therefor, upon information under oath, in a summary way, before any justice of the peace, by imprisonment for any period not exceeding three months, or by fine, &c.”

These sections seem to entrench upon the criminal law and procedure in criminal matters, which, by the “British North America Act, 1867,” comes within the exclusive legislative authority of the Parliament of Canada.

I recommend that the attention of the Lieutenant-Governor be called to them, in order that his government may promote, at the next session of the legislature, legislation to repeal or amend the same, before the time expires within which the power of disallowance can be exercised.

No. 6.—“An Act to enable Municipal Corporations to pass By-laws for the sale of Land for Taxes.”

The 3rd section of this Act provides that the owner of land sold for non-payment of taxes may, within a certain time, redeem the estate sold, by paying to the clerk of the municipality, for the use and benefit of the purchaser, or his legal representatives, the sum paid by him, together with 18 per cent per annum thereon.

It is questionable whether or not this is legislation in respect of interest, which, by the Confederation Act, comes within the exclusive legislative authority of the parliament of Canada.

Inasmuch, however, as similar legislation has been left to its operation in other provinces, and as the same result might be effected in another way, I recommend that this Act be left to its operation.

No. 9.—“An Act to authorize certain Municipalities to retain and use the Court fines, fees and forfeitures as part of the Civic Revenue.”

This Act is as follows, viz.: “Notwithstanding anything to the contrary contained in any Act, ordinance or proclamation, it shall be lawful for every municipality paying the annual salary of a police magistrate, and maintaining a police force, to retain and use, as part of the municipal revenue, all police court fines, fees, and forfeitures.”

This provision is wide enough to cover not only fines and forfeitures incurred for breach or non-compliance with laws of the province, made in relation to matters coming within the classes of subjects over which the provincial legislature has exclusive legislative authority, but also all fines and forfeitures which may be imposed at the police court under the criminal law of Canada, or by reason of the breach of, or non-compliance with the laws of Canada.

The 102nd section of the British North America Act, 1867, provides that “all duties and revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick, before and at the union, had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective legislatures of the provinces, or are raised by them in accordance with the special powers conferred on them by this Act, shall form one Consolidated Revenue Fund, to be appropriated for the public service of Canada, in the manner and subject to the charges in this Act provided.”

There does not appear to be any provision in this Act reserving to the provinces the revenues derived from fines or forfeitures under the criminal law, and as the parliament of Canada has exclusive legislative authority over the criminal law (except the constitution of courts of criminal jurisdiction) and as that Parliament alone can alter the existing criminal law, under which fines and forfeitures are imposed, and can create new crimes punishable by fine or forfeiture, and alone increase or reduce the amounts of fines and forfeitures under the criminal law, or altogether abolish them,



I am of opinion that the provision of this Act, so far as it attempts to control or dispose of fines and forfeitures imposed by the criminal law, or by any of the other laws of Canada, is *ultra vires* of the provincial legislature, and I recommend that the attention of the Lieutenant-Governor be called to this Act, to the end that the same may, at the next session of the provincial legislature, be repealed, or so amended as to confine it to fines and forfeitures arising under laws of the province made in relation to matters coming within the exclusive legislative authority of the province; otherwise, that it be disallowed.

No. 10.—“An Act to amend the Assessment Act, 1876,”

The third section of this Act amends subsection 11 of section 8 of the Assessment Act, 1876. Section 8 provides that “all lands and personal property and income in the province of British Columbia shall be liable to taxation, subject to the following exemptions, among others; the houses and premises whilst occupied by any of the officers, non-commissioned officers and privates of Her Majesty’s regular army and navy in actual service, and the full or half-pay of any one in any or either of such services, any pension, salary, gratuity or stipend derived by any person from Her Majesty’s Imperial Treasury, or elsewhere out of this province, and the personal property of any person in such naval or military services on full pay, or otherwise, in actual service.”

The amendment is the striking out of the words “or elsewhere out of the the Province.” The effect of this seems to be to bring the pensions, salaries, gratuities or stipends derived by persons from the Dominion treasury within the classes of property liable to taxation. The question how far the provinces have a right to tax the salaries of persons in the service of the Dominion government is now under the consideration of the court of appeal in Toronto, in the case of *Leprohon vs. the City of Ottawa*, and pending a decision as to the powers of a local legislature in this respect, I do not recommend any interference with the Act.

No. 11.—“An Act to prevent the destruction of Pasturage on the Islands in the Gulf of Georgia.”

Section 8 provides for the imposition of a penalty of \$50 upon any person neglecting or refusing to obey the order of the justice of the peace, in respect of using or altering a brand, for the purpose of branding sheep in certain cases.

Section 9 imposes a fine upon certain persons fraudulently branding or obliterating brands on certain sheep. Each of these sections makes use of the word “offence” in dealing with the breach of or non-compliance with its requirements. In a report upon the statutes of Ontario, made by the Minister of Justice on the 25th August, 1873, the following remarks occur:—

“The undersigned would beg leave to suggest the inexpediency of describing in provincial statutes any breach of the law of the province as an ‘offence.’ The 15th paragraph of the 19th section of the British North America Act, 1867, enables a provincial legislature to make laws in relation to the imposition of punishment by fine, penalty or imprisonment, for enforcing any laws of the province. This can be done without describing the breach of the law as an ‘offence.’ The word ‘offence,’ in legal parlance, seems to imply a breach of the criminal law, and when not expressly declared to be treason or felony, may be considered as synonymous with misdemeanour”; and attention has been drawn, in other reports upon provincial legislation, to the inexpediency of using the word “offence” in such cases in provincial statutes; and although I do not recommend the disallowance of this Act on account of the use of the word, I recommend that the attention of the Lieutenant-Governor be called to the remarks just made, and that he be asked to request his Government to see that the use of this word is avoided in future provincial legislation.

No. 13.—“An Act to encourage the mining of Gold-bearing Quartz.”

This Act provides for the payment by the province of the sum of \$15,000 to the company which first erects, at a certain specified place, a quartz mill of certain dimensions, and the 4th section is as follows:—

“After payment of such sum, Her Majesty’s Attorney-General for the province of British Columbia, on behalf of Her Majesty, shall be deemed to be, as against the company so receiving such money, a creditor for such money, and shall have at law

and in equity a first mortgage upon the said mill, and other the property of the said company, for the said sum of \$15,000, without the registering or recording of such mortgage, and notwithstanding any prior legal or equitable mortgage thereon."

This section would seem to be objectionable, as it may be an interference with vested rights of private individuals, without providing for any compensation to them therefor. It may be that the land and other property of the company which may first erect the mill, has been *bona fide* mortgaged or pledged before the payment of the \$15,000, and even before the passing of the Act. If so, such mortgage or pledge might be rendered valueless without the knowledge or consent of the holder, as upon payment of the 15,000, the Attorney-General of the province is to have at law and in equity a first mortgage upon the mill and other property of the company, without registering or recording the mortgage; and notwithstanding any prior legal or equitable mortgage thereon, should the mill be destroyed or the venture prove a failure, the first charge of \$15,000 might more than cover the value of the property.

I recommend that the attention of the Lieutenant-Governor be called to this provision, with a view to its amendment at the next session of the legislature, in order to meet the objections just mentioned.

No. 14.—"An Act relating to Minerals other than Coal."

This Act provides for the mode of location of mining claims, and for the extent of the applicants interested in the location.

Section 11 is as follows:—In case any dispute shall arise between the applicants for the same claim, or any portion thereof, any supreme court judge, county court judge, or gold commissioner shall have full power to hear and determine the dispute, and the procedure and practice shall be analogous to that provided for in the "Gold Mining Ordinance, 1867." Although I do not propose to recommend the disallowance of this Act, I think it proper to call attention to the various Acts relating to the gold commissioner, and his powers as a judge of the mining court, and to the danger of allowing legislation which increases, from time to time, the jurisdiction of this court, the judge of which has not been appointed by the Governor General.

Ordinance No. 90, assented to on 2nd April, 1867, of the revised laws of British Columbia, section 4, provides that "the governor may, from time to time, appoint such persons as he shall think proper to be chief gold commissioner, and gold commissioners, either for the whole colony or for any particular district therein, and from time to time, in like manner, fix and vary the limits of, and sub-divide such districts, and make and revoke all such appointments."

Section 5 is as follows:—

"Within every such district or districts there shall be a court, to be called the 'mining court,' in which the gold commissioner of the district shall preside as judge thereof."

Section 6 is as follows:—"Such mining court shall have original jurisdiction as a court of law and equity, to hear and determine all mining disputes arising within its districts, and shall be a court of record, with a specific seal; and in determining suits or actions brought therein, the gold commissioner may render such judgment, or make such order or decree as he shall deem just; and for the purpose thereof, the same powers and authority, legal and equitable, as are now exercised by the supreme court of civil justice of British Columbia, by any judge thereof: provided, however, that the gold commissioner shall, if desired by both parties to a cause of liquidated damages, or if desired by either party to a cause, in case of unliquidated damages, summon a jury of from three to five free miners, to assess the amount of such damages."

In 1872 this Act was amended by No. 14 of the Acts of that year, the 12th section of which is as follows:—

"Section 6 of the principal Act shall be so construed as to give the mining court jurisdiction in all actions arising upon contracts entered into between any free miner, or company of free miners, and any other person or persons, for the supply of goods, wares, merchandise, materials or implements used in mining (articles of clothing excepted), and the gold commissioner shall have full power to enforce any judgment, decree, rule or order of such court, according to the present practice of the supreme court of British

Columbia, by writ of execution, process of contempt, proceedings for attachment of debts, or by other process adopted by such supreme court.

This Act was left to its operation, without special remarks.

In 1873, Act No. 14 of that year was passed, providing for the merging of the mining court into the county court, and giving the county court judges the same jurisdiction and powers as those had and exercised by the gold commissioners, acting as judges of the mining court; but the Act is to come into force in such portions only of the province as the Lieutenant-Governor in Council may, from time to time, by proclamation, order, and such order may, in like manner, be from time to time varied or revoked.

This Act, also, was left to its operation, without special remark.

In 1876, Act No. 26 of the statutes of that year was passed, which, after referring to an Act of 1873 authorizing the acquisition of the fee simple of certain mining lands upon certain conditions, provides, by section 7, as follows: "That the gold commissioner shall, with reference to real estate held under the said Act, have the same powers and authorities to decide all matters or disputes arising between the owners thereof, or between the owners and any third person, in the same way and as fully as he might do concerning claims not being real estate; and actions, suits and other proceedings relating to such matters or disputes, shall be brought and had in the same manner as actions, suits or proceedings relating to mining claims not being real estate."

This Act was also left to its operation, without special remark. The section of the Act now under consideration, further extends the powers of the gold commissioner as judge of the mining court. The 96th section of the British North America Act, 1867, empowers the Governor General to appoint the judges of the superior, district and county court in each province, except those of the courts of probate in Nova Scotia and New Brunswick.

By the 92nd section, the provincial legislatures have power to make laws in relation to the administration of justice, including the constitution, maintenance and organization of provincial courts, both of civil and of criminal jurisdiction. They have also power to legislate respecting the establishment and tenure of provincial offices, and the appointment and payment of provincial officers. If there be powers in the legislature of British Columbia to establish this so-called mining court, and appoint and pay the judges thereof, it must be found in the section I have just quoted. I think, however, that this court, which is declared to have original jurisdiction, to be a court of law and equity, and a court of record with a specific seal, and for the purpose of enforcing its judgments, orders and decrees, to have (with certain exceptions) the same powers and authority, legally and equitably, as are exercised in the supreme court of civil justice of British Columbia by any judge thereof, which has power also to summon a jury to assess damages, may be considered a court within the meaning of the 96th section of the Confederation Act.

It is not, in my opinion, necessary, to bring a provincial court within the provisions of this section, that it should be called by the particular name of superior, district or county court. The exception to that section itself indicates that the courts of probate in Nova Scotia and New Brunswick would, unless specially excepted, have come within the definition of superior, district or county courts. It will be readily seen how easy it would be for the local legislature, by gradually extending the jurisdiction of these mining courts, and by curtailing the jurisdiction of the county courts or supreme courts, as now established, to bring within their own reach, not only the administration of justice in the province, but also practically the appointment of the judges of the courts in which justice is administered. Inasmuch, however, as legislation of a similar nature to that contained in the section now under consideration, has been left to its operation in previous years, and as the provisions of the section appear to be convenient, I do not recommend a disallowance of the Act.

I recommend, however, that the attention of the Lieutenant Governor be called to the observation just made. The 14th section provides that the Act shall only apply to unoccupied and unreserved crown land, and shall not apply to any Indian reserve or settlement. I call attention to the report of the Minister of Justice, dated 9th March, 1874, upon caps. 1, 3 and 4 of the statutes of British Columbia of that year, in which



it was pointed out, that as the two years, by which, under the terms upon which British Columbia entered the union, lands were to be reserved by the Government of British Columbia from sale, with a view to setting apart such lands as are requisite for the Canadian Pacific Railway, had expired, there was no objection to the passage of these Acts; but it was suggested that communication be had with the Lieutenant-Governor, calling his attention to the practical inconvenience which must ensue to the Governments of Canada and British Columbia if land be sold by the province on any portion of the line, which may hereafter be selected as that of the Canadian Pacific Railway, and that his consideration be requested to the propriety of withholding from sale or rights of pre-emption lands which, in so far as surveys have been heretofore made, can possibly be contiguous to the line of railway, if any one of such surveys be adopted. I recommend that a similar course be pursued with reference to this Act.

No. 15.—“An Act to make Regulations with respect to Coal Mines.”

The word “offence” occurs no less than fifty-two times in this Act. I refer to the remarks I have made above as to this word. Section 14 is as follows, viz. :—

“Any Act for the time being in force, relating to weights and measures, shall apply to the weights used in any mine to which this Act applies, for determining the wages payable to any person employed in such mine according to the weight of the coal gotten by such person, in like manner as it applies to weights used for the sale of any article, and any inspector of weights and measures for the province, appointed under the said Act, shall, accordingly, from time to time, but without unnecessarily impeding or interrupting the working of the mine, inspect and examine, in manner directed by the said Act, the weighing machines and weights used for mines to which this Act applies, or the measures or gauges used for such mines: provided, that nothing in this section shall prevent the use of the measures and gauges ordinarily used in such mine.”

This section intrenches upon the subject of weights and measures, which, by the British North America Act, 1867, comes within the exclusive legislative authority of the Parliament of Canada. I recommend that the attention of the Lieutenant-Governor be called to this provision, in order that his government may, before the time for disallowance of the Act arrives, promote its repeal.

Section 32 provides that: “Every person who commits any of the following offences, that is to say :—

“1. Forges or counterfeits or knowingly makes any false statement in any certificate of competency or service under this Act, or any official copy of such certificate; or

“2. Knowingly utters or uses any such certificate, or copy which has been forged or counterfeited, or contains any false statement; or

“3. For the purpose of obtaining, for himself or any person employed as a certified manager, or the grant, renewal or restoration of any certificate under this Act, or a copy thereof, either—

“a. Makes or gives any declaration, representation, statement or evidence which is false in any particular; or

“b. Knowingly utters, produces or makes use of any such declaration, statement or evidence, or any document containing the same, shall be guilty of an offence against this Act, and be liable, on conviction, to imprisonment for a term not exceeding twelve months.”

This section clearly intrenches upon the criminal law.

I recommend that the Lieutenant-Governor be requested to invite its repeal before the time for disallowance of the Act arrives.

The 28th subsection of section 46, part II, of the Act, is as follows, viz. :—

“No person shall wilfully damage, or, without proper authority, remove or render useless any fence, fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, break indicator, steam gauge, water gauge, safety valve, or other appliance or thing provided in a mine in compliance with this Act.”

This seems to entrench upon the criminal law, relating to malicious injuries to property, but as the provision is a useful one, and doubts may arise as to whether all

the cases mentioned in the section are provided for in the criminal law, I do no more than call attention to the fact.

No. 18.—“An Act to amend the Election Regulation Act, 1871.”

This Act seems unobjectionable, with the exception of the use of the word “offence” in the 8th section. The attention of the Lieutenant-Governor should be called to this word.

No. 19.—“An Act to amend the law relating to Procedure at Election of Members of the Legislative Assembly of British Columbia”

The 11th section is as follows:—

“Every person who,—

“(1.) Forges or counterfeits, or fraudulently defaces, or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or

“(2.) Without due authority, supplies any ballot paper to any person; or

“(3.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in; or

“(4.) Fraudulently takes out of the polling station any ballot paper; or

“(5.) Without due authority, destroys, takes, opens or otherwise interferes with any ballot box, or packet of ballot papers then in use for the purposes of the election; or

“(6.) Opens and exhibits his ballot paper to any one, after having duly marked the same, preparatory to depositing in the ballot box—

“Shall upon a summary conviction before a justice of the peace, be liable to a fine not exceeding one hundred dollars, or to imprisonment for any term, not exceeding twelve months, if he is a returning officer, or an officer or clerk in attendance at a polling station, and if he is any other person, to imprisonment for any term not exceeding six months, any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.”

The 1st subsection in so far as it relates to the forging or counterfeiting of ballot papers clearly entrenches upon the criminal law. The word “offence” also occurs in this section and in the 12th section. I recommend that the attention of the Lieutenant-Governor be called to these remarks, with a view to amendment of the objectionable parts.

The 23rd section is as follows:—

“The provisions of the ‘Election Regulation Act, 1871,’ as regards personation, apply to personation under this Act, in the same manner as they apply to a person who knowingly personates, and falsely assumes to vote in the name of another person as mentioned in the said Act.”

On turning to the Election Regulation Act, 1871, the provisions as regards personation appear to be contained in the 67th, 68th and 69th sections.

These sections provide that any person knowingly personating and falsely assuming to vote in the name of any other persons shall be guilty of a misdemeanour, and on being convicted thereof shall be liable to a certain fine or imprisonment. That the returning officer, if he has reason to suspect that any person is personating, &c., may require such person to sign his name in a book, and any person signing the name of an elector, not being his own name, shall be guilty of forgery, and liable on conviction to be punished accordingly, and that any such person who being unable to write, shall fix his mark to the name of any elector not being his own name, shall be guilty of forgery, and liable on conviction to be punished accordingly. The attempt to incorporate these provisions in the Act now under consideration clearly entrenches on the criminal law.

I recommend that the attention of the Lieutenant-Governor be called to this, in order that the objection may be removed by amendment before the time expires within which the Act may be disallowed.

No. 22.—“An Act to provide for the better Administration of Justice.”

I propose to report upon this Act at a future time.

No. 24.—“An Act to consolidate the laws relating to the Legal Profession in this province.”

I propose to report upon this Act at a future time.

No. 30.—“An Act to prohibit the sale or gift of Intoxicating Liquors to Minors, and to prevent the frequenting of liquor saloons by such persons.”

The word “offence” appears in the 3rd section of this Act, and with this exception the Act appears unobjectionable.

No. 31.—“An Act for the relief of Andrew Ostrice, of Victoria.”

Although some objection has been taken to this Act, its provisions seem to be quite within the legislative powers of the province, and I recommend that it be left to its operation.

No. 32 —“An Act to incorporate the Alexandra Company, Limited.”

The 1st section of this Act provides that certain persons shall be a body corporate for the purpose of carrying on the business of corning and curing meats, &c., for engaging in their production and growth, and for the manufacture of hides, leather, soap and candles, and doing all things appertaining thereto or connected therewith, in the province of British Columbia or elsewhere, and shall be capable in law of contracting and being contracted with, suing and being sued, pleading and being impleaded in any court of law or equity within the Province of British Columbia or elsewhere.

The 18th section provides that the company shall have power, among other things, to charter, navigate and maintain ships, steamers, &c., for the carrying and conveying of goods and passengers or other traffic between the ports of British Columbia and elsewhere in Canada, and oceans, lakes, rivers or high seas, or other navigable waters thereof, or from any port or ports in British Columbia or elsewhere in Canada, to any foreign port or ports, or from one foreign port or ports to any port or ports of British Columbia or elsewhere in Canada, and upon the oceans, rivers, lakes or high seas or other navigable waters whatsoever.

The 21st section gives the company power to appoint resident agents at any port or place within the province of British Columbia or elsewhere, for the purpose of effecting purchases and sales and attending to the general interests of the company.

The power of the local legislature to incorporate a company is to be found in the 11th subsection of section 92, British North America Act, 1867. Such power is confined to the incorporation of companies “with provincial objects.” It appears to me that some, at least, of the powers conferred upon this company are not confined to provincial objects. The company is not only incorporated for the purpose of carrying on its business in British Columbia, but the words “or elsewhere” are added, which would apparently enable them to carry on business over the whole Dominion, and also in other countries. The power to charter, navigate and maintain ships, steamers, &c., for the carrying and conveying of goods and passengers or other traffic to the wide extent above mentioned clearly exceeds any fair construction of the words “with provincial objects.” In fact the attempt to authorize this company to carry on so extended a traffic seems to be in direct conflict with the 10th subsection of section 92, which enables the local legislature to make laws in relation to local works and undertakings, other than such as are of the following classes, namely :—

“Lines of steam or other ships, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province lines of steamships between the province and any British or foreign country.”

Legislation of a nature similar to this which has taken place in other provinces of the Dominion has been objected to, and has been either disallowed or subsequently amended or repealed.

I recommend that the attention of the Lieutenant-Governor be called to the objectionable features of this Act to the end that his Government may, at the next session, and before the time expires within which it must, if not amended, be disallowed, promote such legislation as may be necessary to amend the Act in such a manner as will confine the objects of the company to such matters as may be within the legislative authority of the provincial legislature.

It is doubtful whether the provisions of the 21st section, giving the company power to appoint a resident agent at any place within British Columbia or elsewhere, for the purpose of effecting purchases and sales, and attending to the general interests of the



company, are within the authority of the local legislature. If, however, the objects of the company be confined to provincial objects, within the meaning of those words in the British North America Act, the power thus given would not appear to be objectionable.

No. 33.—“An Act to incorporate the British Columbia Insurance Company, Limited.”

This Act, by section 1, incorporates certain persons for carrying on the business of fire and marine insurance, and doing all things appertaining thereto or connected therewith, in the province of British Columbia and elsewhere.

Section 18 gives the company power to make contracts of insurance with any person against loss or damage by fire, or lightning on any house, store or other building whatsoever, and, in like manner, on any goods whatsoever, and to make contracts of insurance with any person against loss or damage by fire, storm or tempest, or from any other cause, of or to ships, boats, vessels, steamboats or other craft navigating the oceans, lakes, rivers, or high seas, or other navigable waters whatsoever, from any port or ports in Canada to any other port or ports in Canada, or to any foreign port or ports upon the oceans, lakes, rivers or other navigable waters aforesaid, or from one foreign port to another foreign port, or from any foreign port or ports, to any port or ports in Canada or elsewhere, upon all or any oceans, lakes, rivers and navigable waters aforesaid, and against any loss or damage of or to the cargoes or property conveyed in or upon any such ships, &c., and the freight due or to grow due in respect thereof, or of, or to timber or other property of any description conveyed in any manner upon any of the oceans, seas, &c., or on any railway, or stored in any warehouse or railway station, and generally to do all matters and things relating to or connected with fire and marine insurance.

The 21st section empowers the company to appoint resident agents at any place within the province of British Columbia, or elsewhere, for the purpose of effecting at such places marine insurance upon ships, freights and cargoes, and insurance against losses by fire on buildings and other property, and to appoint and establish local agencies and local boards of direction or of supervision, and gives the company power to comply with the laws of any province, state or country wherein it proposes to carry on business, so far as such laws are not inconsistent with the provisions of the Act.

The powers thus proposed to be conferred by this Act appear to be too wide, as the company is in effect authorized to do a universal insurance business.

I refer to the remarks just made upon the preceding Act which are here applicable.

Acts similar to the one now under consideration were passed by other provinces, but were objected to, and amended, or disallowed.

I refer to the report of the Minister of Justice of the 15th September, 1876, upon certain Acts passed by the legislature of Nova Scotia, 38 Vic. (1875), where remarks are made and extracts given from other reports upon this subject.

I recommend that a similar course be taken with this Act to that which has been recommended with reference to the preceding one.

The 9th section empowers the company to invest its funds in the public securities of the Dominion of Canada, or of any of the provinces thereof, or of any foreign state or states, when required for the carrying on of business in such foreign state, or in the stocks of any chartered banks or building societies, or in the bonds or debentures of any incorporated city, town, &c., or in mortgages of real estate, in such manner and at such rate of interest as may be agreed upon, not exceeding the rate allowed by law in the provinces where the investment is made.

The objections above pointed out apply to this clause so far as it refers to the carrying on of business in a foreign city, and the power to invest at such rate of interest as may be agreed upon, seem to be *ultra vires* of the provincial legislature, inasmuch as the subject of interest comes within the exclusive legislative authority of the parliament of Canada, as, however, the existing law relating to interest in British Columbia appears to enable parties to agree upon any rate, and as the provision of this section confines the parties to any rate, not exceeding the rate allowed by law in the province, no inconvenience is likely to arise from this provision.

No. 35—In addition to the above Acts of the legislature of British Columbia, a Bill was passed intituled: "An Act to amend the Gold Mining Amendment Act, 1872," which Bill was reserved by his honor the Lieutenant Governor, for the signification, of the pleasure of his Excellency the Governor General thereon. The Act is as follows:—

"Every mining court in this province shall, in addition to its present jurisdiction, have jurisdiction in all personal actions arising within the limits of its district, and the gold commissioner presiding in any such court shall have the like powers to enforce any judgment, decree, rule or order of such court, as are conferred by section 12 of the Gold Mining Amendment Act, 1872. The provisions of this Act shall only have effect in the electoral district of Kootenay, and in that part of the province known as Cassiar."

The Attorney General of the province reported upon this Act to the Lieutenant Governor as follows:—

"This Act gives jurisdiction in all personal actions to the gold commissioners in Kootenay and Cassiar, and appears to trench upon the provisions of 96th section of the British North America Act, which vests the appointment of the supreme and county court judges in the Governor General alone, inasmuch as it provides that the paid employes of the local government in the district aforesaid, shall have and exercise almost as much power as a supreme court judge. As I think the legislature has not the power in effect to make these appointments, I would suggest that the Act be reserved for the consideration of his Excellency the Governor General."

I refer to the remarks made upon the mining court in connection with the 11th section of Act No. 14. This bill is an illustration of the danger I have above alluded to, as if it become law the jurisdiction of the mining court in the districts referred to will be greater than the jurisdiction of the county court, and equal to that of the supreme court. It might be convenient that a somewhat extended jurisdiction should be given to a district court or magistrate in the districts of Kootenay and Cassiar, thereby avoiding the expense and delay attendant upon a judge of the supreme court travelling to these distant parts of the province, for the purpose of holding an assize, and it is probable that this bill was passed with that object in view. I would mention, however, that even were this bill assented to it would be necessary for a supreme court judge to proceed to the district mentioned for the trial of criminal cases. Upon the whole I recommend the assent of the Governor General be not given to this bill, which, in fact, should have been disposed of by the local authorities themselves.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur,

R. LAFLAMME,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th February, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st February, 1878.

I have now the honour to report upon two Acts passed by the legislature of British Columbia in the session of 1877, which have have not yet been reported upon, namely:—

No. 22.—"An Act to provide for the better Administration of Justice."

This Act comes into operation only upon the proclamation of the Lieutenant Governor in Council published in the *British Columbia Gazette*. It has not, so far as I can ascertain, been yet proclaimed.

It establishes county courts for certain districts in the province and provides by section 9, that each court shall be holden before a judge to be called the judge of the county court of (as the case may be). That each such judge shall be appoint-

ed by the Governor General of Canada, and shall hold office during the pleasure of the Governor General.

Upon this provision I may remark that in other provinces where county court judges have been appointed, the tenure of their office has been declared to be during good behaviour, but in the present state of the county courts in the province of British Columbia, it is probably better that the judges of the county court should, as declared by this Act, hold office during the pleasure of the Governor General.

The only other provision of this Act which calls for special remark is section 27, which is as follows, viz.:—"And whereas, the Governor General of Canada, on the 27th day of April 1871, referred the question of retiring allowances of certain officers in British Columbia, to the decision of Her Majesty's Secretary of State for the Colonies who, on the 30th June, 1871, gave his decision, stating that the present incumbents of the county court bench should not be removed, unless and until they received from the Dominion government, either suitable employment of at least equal value, or an annual allowance of two-thirds of five hundred pounds; therefore, it is provided that the present incumbents of the county court bench shall not be removed, except on the terms aforesaid, for the purpose of appointing professional men."

One of the provisions in the terms agreed upon for the confederation of the province of British Columbia is as follows:—

"Suitable provisions, such as shall be approved of by Her Majesty's government, shall be provided by the government of the Dominion for those of Her Majesty's servants in the colony, whose position and emoluments derived therefrom would be affected by political changes in the admission of this colony into the Dominion of Canada."

It seems to be necessary to a proper understanding of the position of the present incumbents of the county court bench, to refer to the documents connected with the question of retiring allowances of certain officers in British Columbia, including the county court judges, in respect of which communication was had with Her Majesty's Secretary of State for the Colonies.

On the 6th February, 1871, the executive council of the province of British Columbia passed a minute which was transmitted to the Governor General of Canada by Governor Musgrave of British Columbia, by despatch of the 9th February, 1871.

This minute of council refers to the cases of

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|---|-------------------------------------|
| 1. The colonial secretary.              | 4. The collector of customs.        |
| 2. The attorney-general.                | 5. The auditor-general.             |
| 3. The commissioner of lands and works. | 6. The six stipendiary magistrates. |

And states "that the committee gather that the Canadian government are prepared to retain Nos. 3 to 6 in their present situations or similar ones."

The minute further states that "inasmuch as by the minute of the Privy Council of Canada two-thirds of the present emoluments have been mentioned, the committee would suggest that a sum not exceeding two-thirds the actual salary of the officer should be fixed, in order to compensate such officer for any other emoluments of which he might be deprived, namely:—

Colonial secretary.....	£600 per annum
Commissioner of lands and works.....	600 do
Collector of customs.....	600 do
Six stipendiary magistrates.....	350 do
Auditor-general.....	350 do

On the 26th April, 1871, a report from the honourable the Minister of Finance, dated 24th April, 1871, upon the subject, was approved by the Governor General in Council, and the recommendations therein submitted adopted. This report was made upon a despatch from Governor Musgrave, dated 9th February, 1871.

The Minister of Finance in his report dealt with the case of the several officers in the employment of the British Columbia government. As to the case of stipendiary



magistrates, the minister remarked: "It appears that no difficulty exists as to the stipendiary magistrates, who are to continue to serve at their present salaries." And in concluding his report the minister recommended that the papers and despatches bearing upon the subject should be transmitted to Her Majesty's Principal Secretary of State for the Colonies: "With a request that Her Majesty's government will decide how the officers in British Columbia are to be dealt with, under the 6th section of the terms of confederation with British Columbia."

On the 27th April, 1871, the Governor General accordingly transmitted to the Secretary of State for the Colonies the papers referred to, and on the 3rd June, 1871, the Secretary of State replied, and in reference to the stipendiary magistrates wrote as follows:—

"Your Privy Council remark that no difficulty appears to exist as to the stipendiary magistrates, who are to continue to serve at their present salaries. I understand from this that your Government concur in, and accept the proposals of Governor Musgrave, as contained in paragraphs 3 to 8 of his despatch No. 30, of 22nd November last, and that whenever, from any cause, any of them ceases to hold his present employment, he will receive either suitable employment of at least equal value, or an annual allowance of two-thirds of £500. I do not, however, consider that the stipendiary magistrates have the same claim as the other superior officers of the Government, to the option of retiring at present upon a pension. I look upon them, to use Governor Musgrave's words, 'as a class apart,' whose position is not necessarily affected by political changes on the admission of British Columbia into the union."

It will be observed that the recital in the section now under consideration as to the decision of the Secretary of State for the Colonies is inaccurate, and were the section, in providing "that the present incumbents of the county court bench should not be removed except on the terms aforesaid, for the purpose of appointing professional men," within the powers of the provincial legislature, the inaccuracy in the recital of the decision of the Secretary of State for the Colonies, would be a sufficient reason for disallowing the Act were it not amended, but I am of opinion that the enactment is *ultra vires* of the provincial legislature, inasmuch as it assumes to limit the power of the Dominion government, in respect of the retirement or removal of officers appointed, paid by, and holding office during the pleasure of the government of Canada.

I say nothing as to the implied want of confidence in the good faith of the Dominion government contained in the section, as it is unnecessary to deal with it upon that ground.

I recommend that the attention of the Lieutenant-Governor be called to these remarks, and that he be asked to request his government to promote, at the present session of the legislature, the repeal of the section.

I recommend further that unless the section be repealed before the time for disallowance of the Act expires, the Act be disallowed.

Cap. 24—"An Act to consolidate the laws relating to the legal profession in this province."

The provisions of this Act place certain restrictions, which did not previously exist, upon the admission of barristers and attorneys to practice in the courts of the province, and although the wisdom of these restrictions, in the present limited state of the legal profession in British Columbia, may be questioned, yet, as the subject matter of the Act comes within the legislative authority of the provincial legislature, the power of disallowance could not properly be exercised in respect of the Act, unless some Dominion interests were prejudiced thereby. The only way in which it could be said that Dominion interests would be prejudiced by the Act, would be in reference to the appointment of judges to the courts of the provinces, if those judges had to be selected from the bar of the province.

After carefully considering the provisions of the British North America Act, as made applicable to British Columbia, by the terms upon which that province entered confederation, I am of opinion that the selection of judges for British Columbia is not confined to the bar of that province. This, no doubt, was the opinion of the Minister of Justice at the time that Mr. Justice Gray, of the New Brunswick bar, was appointed a

judge of the Supreme Court of British Columbia, and such being the case, the Act appears to me to be one which should be left to its operation, and I recommend accordingly.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur,

R. LAFLAMME,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 16th May, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th May, 1878.

I have the honour to report :—

That by my reports of the 29th September, 1877, and 21st February, 1878, respecting the Statutes passed by the legislature of the province of British Columbia, in the year 1877, objections to certain Acts were taken, and the attention of the Lieutenant-Governor called thereto, with the request that the objections might be removed by repeal or amendment, before the time for disallowance expired.

Not having received a copy of the statutes passed by the legislature of the province during the session which lately closed, and not having been informed by the Lieutenant-Governor as to the action (if any) which had been taken with respect to the objectionable Acts, and the time for disallowance expiring on the 21st May, inst., the following telegram was transmitted by the Secretary of State to the Lieutenant-Governor on the 30th April, last, viz.:—

“Please state what action (if any) has been taken in reference to objections made to certain provisions of certain statutes passed by your Legislature last year. Time for disallowance expires 22nd May. Reply first mail.”

“Nothing done towards repealing objectionable clause. Copy of Acts passed last Session mailed to you on the 24th ultimo. Have written.”

On the 8th May, instant, certified copies of the statutes of British Columbia of last session were received.

On examining them I find, that with the exception of the following Acts, viz. :—

No. 22. “An Act to provide for the better Administration of Justice,”

No. 32. “An Act to incorporate the Alexandra Company, Limited.”

No. 33. “An Act to incorporate the British Columbia Insurance Company, Limited,”

All the objections to the Acts of 1877 have been removed by legislation.

The letter referred to by the Lieutenant-Governor in his telegram of the 2nd instant, has not yet been received, and the time for action being so short, I think it imprudent to wait any longer, as the Acts last referred to are very objectionable, and exceed the powers of the local legislature, and must, in accordance with the suggestion contained in the approved reports upon them, be disallowed.

No great inconvenience will result from the disallowance of Act No. 22, inasmuch as it has not yet been brought into force ; and the other two Acts, Nos. 32 and 33, being for the incorporation of private companies, it is not likely that much inconvenience will result from their disallowance, especially as many of the powers assumed to be conferred upon these companies, are already beyond the authority of a local legislature.

I recommend, therefore, that the Acts, viz. :—

No. 22. “An Act to provide for the better Administration of Justice,”

\* No. 32. “An Act to incorporate the Alexandra Company, Limited,”

No. 33. “An Act to incorporate the British Columbia Insurance Company, Limited,” passed by the legislative assembly of the province of British Columbia, in

the fortieth year of Her Majesty's reign, A.D. 1877, be disallowed by your Excellency in Council, and that the necessary proclamation in that behalf be issued.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur.

R. LAFLAMME,  
*Minister of Justice.*

*Order in Council disallowing the Acts 22, 32 and 33, above mentioned, published in the Canada Gazette on the 18th day of May, 1878, vol. XI., No. 46, page 1188.*



## BRITISH COLUMBIA, 41ST VICTORIA, 1878.

## 3RD SESSION, 2ND PARLIAMENT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 1st August, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd July, 1879.

I have the honour to report upon eighteen Acts passed by the legislature of the province of British Columbia, during the session held in the spring of 1878, the titles of which are as follows :—

"An Act to amend the 'Power of Attorney Act, 1875.'"

"An Act to amend the 'Qualification and Registration of Voters Act, 1876.'"

"An Act to amend the 'Coal Mines Regulation Act, 1877.'"

"An Act to amend certain Acts relating to Municipalities (cap. 129 of the Consolidated Statutes of British Columbia)."

"An Act to encourage the mining of Gold-bearing Quartz."

"An Act to amend the 'Ballot Act, 1877.'"

"An Act for the protection of certain Animals and Birds in British Columbia."

"An Act relating to Corporations."

"An Act for dyking and reclaiming certain lands at Chilliwack, Sumass and Matsqui."

"An Act to incorporate the British Columbia Express Company."

"An Act to incorporate the Moodyville Saw Mill Company, Limited."

"An Act to incorporate the British Columbia Milling and Mining Company."

"An Act for the better regulation of traffic on the highways of British Columbia."

"An Act to amend the 'Consolidated Public School Act, 1876,' cap. 142. Con. Stat. 1877."

"An Act relating to Minerals, other than coal, found in lodes or veins, and to amend the Gold Mining Ordinance, 1867." (Con. Stat., cap. 123.)

"An Act to amend the 'School Tax Act, 1875.'" (Con. Stat., cap. 43.)

"An Act to amend the 'Sheriffs Act, 1873.'"

"An Act for granting certain sums of money required for defraying the expenses of Civil Government for the half-year ending 30th June, 1878, and for other purposes."

With the exception of the Act intituled : "An Act for dyking and reclaiming certain lands at Chilliwack, Sumass and Matsqui," the above Acts appear unobjectionable, and should be left to their operation.

I was given to understand by the deputy of the Minister of the Interior, that the provisions of the Act last mentioned conflicted with an understanding entered into by the Department of the Interior with the British Columbia Government.

The Act was therefore sent to him for his remarks. After communication with the Indian agent in British Columbia, and with the British Columbia government, the objections to the Act have, I am informed, been removed, and the Department of the Interior has reported that the Act may be left to its operation.

I recommend, therefore, that the eighteen Acts above mentioned be left to their operation.

Z. A. LASH,

*Deputy Minister of Justice.*

I concur.

JAMES McDONALD,  
*Minister of Justice.*

## BRITISH COLUMBIA, 42ND VICTORIA, 1878.

1ST SESSION, 3RD PARLIAMENT.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 17th March, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th March, 1879.

Referring to the Act (No. 20) passed by the legislature of the province of British Columbia, in the year 1878, known as "The Better Administration of Justice Act, 1878," I have the honour to report:—

That, having considered the same, I recommend that it be left to its operation.

JAMES McDONALD,  
*Minister of Justice.*

*Mr. Collector Hamley to the Lieutenant-Governor British Columbia.*

CUSTOM HOUSE, VICTORIA, 2nd September, 1878.

SIR,—In the report of the proceedings in the House of Assembly on Friday last, Mr. Galbraith is stated to have said that the bill to disfranchise Custom officers and others, was brought forward in accordance with the wishes of those persons themselves. As far as the custom house is concerned, no statement could be more inconsistent with the truth. I have never spoken a word to Mr. Galbraith, or to any other member of the House, on the subject, nor has any one employed in the custom house here, and to prevent misunderstanding in a matter that may at some future time be of importance, I shall be glad if you will be so good as to forward this letter, with the bill, for the consideration of the Canadian government.

I have, &c.,

W. HAMLEY,  
*Collector of Customs.*

*Petition from Government officials at Victoria, B.C., to Governor General.*

*To His Excellency the Right Honourable Sir Frederick Temple Hamilton Blackwood, Earl of Dufferin, Governor General of Canada and Vice Admiral of the same:*

*May it please Your Excellency:—*

We, the undersigned, residing in Victoria, British Columbia, for ourselves, and for others resident in other parts of the province, and holding office under the government of the Dominion of Canada, beg most respectfully to pray that your Excellency will be graciously pleased to take into consideration, with a view to the relief of your memorialists, the Act recently passed by the legislature of this province, and assented to by his Honour the Lieutenant Governor, intitled: "The Qualification and Registration of Voters Act (1876) Amendment Act, 1878," upon the following grounds:—

1. That the civil rights of the officers of the Dominion government in this province are seriously affected by this Act.

2. That it is arbitrary and unjust, if not unconstitutional, for the provincial legislature to deprive the officers of the Dominion government in this province, of the right to vote at the election of members to serve in the Dominion or provincial parliaments, and that it is a flagrant outrage upon their common rights as British subjects to make the mere expression of opinion, or intimation of feeling, a penal offence punishable by fine or imprisonment.

3. That we were astonished to hear, and most emphatically deny the allegation made by the introducer of the bill in the legislature (Mr. Galbraith) to the effect that we desired to be deprived of the franchise.

4. That practically manhood suffrage obtains in this province, that many of us have large landed interests in the country, and have enjoyed and exercised in it, for more than twenty years, the right of voting at elections for members of parliament, and that we now find ourselves disfranchised by the passage of this Act.

And your memorialists will ever pray.

R. F. McDONELL,  
District Store-keeper,  
THOS. WESTGARTH,  
Steamboat Inspector,  
And others.

R. B. McMICKING,  
Gen. Sup. Dom. Gov. Telegraphs in B.C.,  
ALEX. C. ANDERSON,  
Inspector of Fisheries, British Columbia.

*By Telegraph from Victoria, B.C., to the Secretary of State.*

VICTORIA, B.C., 19th August, 1878.

Legislature has imposed poll tax forty dollars on all Chinamen in province. Tax not payable by other foreigners. Believed to be unconstitutional. Chinese merchants here pray that the Lieutenant-Governor be instructed to withhold assent, and reserve bill for consideration of Governor General. Petition, &c., will be forwarded.

A. R. ROBERTSON.

*Mr. A. R. Robertson to Secretary of State.*

VICTORIA, BRITISH COLUMBIA, 30th August, 1878.

SIR,—I have the honour to forward herewith for the consideration of his Excellency the Governor General, a petition from several Chinese firms in this city, with respect to a bill recently passed by the legislative assembly of British Columbia, imposing a special tax on the Chinese of this province.

I have, &c.,

A. ROCKE ROBERTSON.

*Petition of Chinese Merchants to His Excellency the Governor General.*

*To His Excellency the Governor General of the Dominion of Canada :*

The petition of the undersigned Chinese merchants residing in the city of Victoria, in the province of British Columbia, in the Dominion of Canada :

*Humbly sheweth :*

1. That your petitioners are doing business in the city of Victoria aforesaid.
2. That the annexed bill, intituled : "An Act to provide for the better collection of provincial taxes from Chinese" passed its third reading in the legislative assembly of British Columbia on the ninth day of August, A.D. 1878.



3. Your petitioners are informed and believe that the said legislative assembly will be prorogued in the course of the present week, when the said Act will be assented to, and become binding on your petitioners and their fellow-countrymen in British Columbia.

Your petitioners humbly represent for your Excellency's consideration the following facts, namely :

There are many Chinese mercantile houses in British Columbia, which have been established in British Columbia for upwards of fifteen years, and during that period the said houses have contributed large amounts to the public revenue.

Under the laws now in force in British Columbia, all Chinamen residing in the said province above eighteen years of age, are compelled to pay a road tax and a school tax, equal to the amounts paid by other residents of the province, and are in all other respects taxed in the same way by both the provincial and municipal governments, as other residents are taxed. The said school tax and road tax for the present year have been already largely collected from the Chinese in the said province.

Although the Act referred to in the several paragraphs of this petition does away with the application of the "Assessment Act, 1876," and of the "School Tax Act, 1876," to Chinese, it substituted a tax which is much more oppressive, inasmuch as :—

1. It is payable by children above twelve years of age.

2. It is a large and arbitrary amount payable by poor and rich alike, and not based upon property or income.

3. It applies to Chinese alone, many of whom are British subjects.

Your petitioners humbly submit that such a tax is inconsistent with, and repugnant to, the treaties existing between Her Majesty the Queen and the Emperor of China.

Your petitioners humbly pray that your Excellency will be pleased to disallow the said Act.

SING LEE CHAM,  
WING CHONG & Co.,  
WO CHIN & Co.,  
TAI LOON & Co.,  
KWONG KONG SING,

HIE LEE,  
TAI YUM,  
DONG SONG & Co.,  
TAY CHONG YUEN,  
KONG LEE & Co.

VICTORIA, B.C., 29th August, 1878.

*Petition of Cannerymen of Salmon to the Governor General.*

*To His Excellency the Earl of Dufferin, K.P., K.C.B., Governor General of Canada :*

The memorial of the undersigned proprietors of establishments for the canning of salmon on the Fraser River in the vicinity of New Westminster, B.C.,

*Humbly sheweth :*

That your memorialists respectfully request that your Excellency will be pleased to disallow "The Chinese Tax Act, 1878," recently passed by the legislative assembly of British Columbia, for the following reasons :—

1. We believe the said Act to be at variance with the British constitution, in this, that it imposes a tax upon persons simply on account of nationality ; that it conflicts with existing treaties, made by the imperial government, and that in many instances it would tax persons who are British subjects, simply because they are Chinese.

2. We believe that it is impolitic, in that it will destroy many industries, which are now being established, and are yet in their infancy, among them is the canning of salmon. Chinese labour is, at present, the only labour available for the prosecution of this business. The short period of time during which the fish run (frequently but one month out of the year) prevents other classes of labourers from seeking employment in canneries, except in the procuring of fish which is entirely done by white men

and Indians. Frequently the whole amount of money earned in a season by a Chinaman is less than the annual tax demanded by this Act. Should the Act be enforced it will virtually compel all the canneries on the Fraser River to close, and absolutely ruin those who have invested their capital in the business.

3. We respectfully submit that this Act is opposed to natural justice and common sense, in demanding, as it does, from the employer, a penalty for the fault committed by the employee, thus introducing a new and vicious principle into English law, whereby an innocent man, against his will, is made answerable for the fault of a wrong-doer.

4. The number of Chinese who are now in this colony is not so great as to interfere with white men, or to crowd them out of employment. On the contrary, the fact that Chinamen can be obtained for canneries, gives room for over fifteen hundred whites and Indians, who are engaged in fishing, and who would be at once thrown out of employment if the canneries should be forced to close.

5. The popular cry against Chinese proceeds from a class who have nothing at stake in the country, and we believe is not in accordance with the opinions of the most intelligent and better class of our population.

Your memorialists, therefore, pray that for these various reasons your Excellency will be graciously pleased to withhold your Excellency's assent from and disallow the said Act, and your memorialists as in duty bound will ever pray.

A. HOLBROOK, *Chairman*,  
KING & Co.,  
LANE, PIKE & NELSON,  
DELTA CANNING Co.,  
FINDLAY, DURHAM & BRODIE,

ENGLISH & Co.,  
EWEN & WISE,  
BRITISH COLUMBIA PACKING Co.,  
R. J. FINLAYSON, JUN.

6th September, 1878.

*Lieutenant-Governor of British Columbia to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, VICTORIA, B.C., 3rd September, 1878.

SIR,—I have the honour to inclose you herewith, for the information of his Excellency the Governor General of Canada, a copy of "An Act to provide for the better Collection of Provincial Taxes from Chinese," to which I, yesterday, assented in Her Majesty's name.

I beg to inform you that I shall forward, in due course, copies of all Acts passed at the late session, with the usual report, and only forward the inclosed copy in advance, as the question involved in it is one of importance.

I have, &c.,

A. N. RICHARDS,  
*Lieutenant-Governor.*

*Sir M. E. Hicks-Beach to the Marquis of Lorne.*

DOWNING STREET, 29th November, 1878.

MY LORD,—I have the honour to transmit to you the accompanying copy of a letter from the Foreign Office, with an inclosure from the Chinese minister at this court, respecting a bill recently passed by the legislature of British Columbia, subjecting Chinese merchants and labourers, resident in the part of the Dominion, to a poll tax of \$10 per annum.

I shall be glad if your lordship will furnish me at your early convenience with a report upon the steps which have been taken in connection with this bill, which has not been received at this department.

The complaint of Chinese residents appears to have been already brought under the notice of the Dominion government, and a telegraphic notice appeared in the London papers to the effect that the Supreme Court of the province had declared the Act illegal. I shall be glad to be furnished with any information at your command upon the latter statement.

I have, &c.,

M. E. HICKS-BEACH.

*The Foreign Office to the Colonial Office.*

FOREIGN OFFICE, 18th November, 1878.

SIR,—I am directed by the Marquis of Salisbury to transmit to you to be laid before Her Majesty's Secretary of State for the Colonies, the accompanying copy of a letter from the Chinese minister at this court, representing that by a bill recently passed by the legislature of British Columbia, Chinese merchants and others resident in that colony, are subjected to a poll tax of \$40 per annum, from which they petition to be relieved, and I am to request that in laying this letter before Sir M. E. Hicks-Beach you will move him to inform Lord Salisbury what reply should be given to Kno Ta Jeu's representation.

I am, &c.,

T. V. LISTER.

*The Chinese Minister to the Marquis of Salisbury.*

CHINESE LEGATION, 2nd November, 1878.

MY LORD MARQUIS,—I have the honour to inform your lordship that I have just received a joint petition from the merchants and labourers of the Chinese firms Kwang li Tai, Yuan Lung, Sciang Tai Suou Chung, Tai-chang Yuan and Sin Yee, of Victoria, British Columbia. The statement and the petition is as follows:—

"We, the merchants and labourers are the natives of China. We have been for many years in Victoria, in the British Dominion of Canada, North America, either as merchants importing and selling goods, or as labourers undertaking manual works. In the spring of this year we heard that the new legislature would pass a bill levying an oppressive tax on the Chinese, but thought it was a rumour, and could by no means become a fact; as the English people in China are not taxed in any way, there is no reason why the Chinese people in the British Dominion should be taxed. It was in the sixth month of this year that the rumour became true, and a bill was passed that every man was to be taxed \$40 a year; but the Governor of Victoria has not yet signed it;

Therefore, we went in haste to see the authorities of Victoria, and requested them not to sign the bill. The authorities informed us that this was a matter to be decided on by the Governor General of Canada. If no instructions stopping the passing of the bill were received, the Victoria authorities could not do otherwise than to sign it. We immediately laid the matter before the Governor General of Canada by a telegram, and received from his Excellency a reply stating that his Excellency could not decide until examination had been instituted after the receipt of petitions. We at once engaged a lawyer named Si Pa Chin to draw up a petition, which was sent to Canada on the fourth of the eighth month, but up to this time no reply has yet been received.

On the 11th day official messengers who came to urge the payment of siay-yiu were brought to us—the English words for siay-yiu are tax silver. The official messengers holding tax papers in their hand, declared that they received instructions from the high functionaries to collect taxes for the government, that every man should every



year pay a tax of forty dollars, which were to be paid quarterly, and that if no tax were paid in accordance with the regulations, the official messengers would come in the course of next week to remove their goods and confiscate the same. The same statement found expression in the newspapers here. At the time we endeavoured to put off the payment of the tax, but among the labourers, the employers of some have already deducted the taxes of the employed to pay the said tax. If such usage prevails, the merchants who make but very slight profit cannot bear the burden of taxation. Indeed, it is very much more unbearable for the poor labourers to be thus taxed; moreover, there are people who are without any employment, for them it is extremely difficult even to get their daily bread. If such persons were equally taxed, their position would be intolerable to an extreme degree.

The popular feelings are so excited that serious disturbance is to be apprehended. Considering that it is of very great consequence to the general order of things we lay before your Excellency our causes of complaints, and beg your Excellency to protect and secure our interests. We do not aim at any extra favourable treatment from the British government. What we hope for is that we may be so fortunate as to receive the same kind of treatment as the people of other nations do.

While drawing up this despatch, I received from his Excellency Chin, his Imperial Majesty's minister to the United States of America, Spain and Peru, a letter acquainting me that the said merchants and labourers sent a similar petition to him, and requesting me to communicate with the British government, and to request them to exempt the said merchants and others from the above mentioned taxation.

I beg to remark that in the British colonies the people of different countries are always treated without any partiality whatever. In the case of the merchants of the Chinese firms, Kranz Li Tai, Juan Lwig and others, if there had been found in them anything unsuitable to the colony, the course of proceeding should have been to discuss the merits and demerits of the matter of fact; it is certainly an extremely inexpedient measure to impose such a burdensome tax on every one of them. I am of opinion that the Lieutenant-Governor of British Columbia cannot fail, in consulting with the Secretary of State for the Colonies, to adopt measures prohibitory of such taxation, in accordance with the existing general regulations. I beg to request the Secretary of State for the Colonies, through your lordship, to cause instructions to be sent to the Lieutenant-Governor of British Columbia directing him to reconsider the case, and order the exemption of the above mentioned tax, so as to secure the safety of the interests of the people concerned.

I have, &c.,

KNO-LUNG-TOO.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th October, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th August, 1879.

I have the honour to report upon certain Acts passed by the legislature of the province of British Columbia in the year 1878 (42 Vic.) and assented to in the month of September of that year.

Cap. 19.—“An Act to amend the ‘Constitution Act, 1871,’ by creating a new Electoral District and providing for a redistribution of seats in the districts of Nanaimo, Cowichan and Kootenay.”

This Act should be left to its operation.

Cap. 20.—“An Act to make further provision for the Administration of Justice.”

This Act has already been, by Order in Council, left to its operation.

Cap. 21.—“An Act to enable the Lieutenant-Governor in Council to establish a tariff of costs in the Supreme and County Courts.”

This Act is doubtless within the legislative powers of the provincial legislature, and as it does not interfere with Imperial or Dominion interests, the power of disallowance should not be exercised with respect to it. The wisdom and expediency of its provisions are, however, open to serious question.

Cap. 22.—“An Act to amend the Qualification and Registration of Voters’ Act, 1876.”

This Act is with the legislative authority of the provincial legislature, and should be left to its operation.

The very stringent provisions of the fourth section against certain persons directly or indirectly influencing voters at provincial elections will, I fear, prove to be very difficult to enforce.

Cap. 23.—“An Act relating to the protection of Game.”

Cap. 24.—“An Act to amend the ‘Highways Nuisances Removal Act, 1878.’”

These two Acts should be left to their operation.

Cap. 25.—“An Act relating to the Crown Lands in British Columbia.”

The provisions of this statute are of a startling nature. The first section casts upon persons who had purchased Crown lands before the Act was passed, and upon persons who held leases or ferry charters, a liability never contemplated by them when the purchases or leases were made. The section declares that from and after the passing of the Act, all moneys due in respect of such purchases, leases or charters shall bear interest at twenty-four per cent per annum until paid.

The second section empowers the Chief Commissioner of Lands and Works, without further notice to the purchaser of Crown lands than a mere notice in the *British Columbia Gazette*, to cancel “all or any records or agreements concerning such lands, and in such case the right of such person therein or thereto, and money paid by him thereon shall be absolutely forfeited, and he shall have no further right at law or in equity to the land so partially paid for.”

If the whole subject matter of this Act were within the exclusive legislative control of the British Columbia legislature, I would feel some difficulty in recommending that the Act be disallowed, merely because its provisions did not accord with my views of justice.

I recognize fully the importance of allowing the local legislature to be the judges of the wisdom and expediency of any Act falling within their exclusive legislative authority.

This Act, however, seems to me to attempt to deal with a subject assigned by the British North America Act exclusively to the parliament of Canada, viz.:—The subject of interest. The case of *Ross vs. Torrance*. The city of Montreal, claimants, reported in vol. 2 of the *Montreal Legal News*, page 186, decides that a statute of the Quebec Legislature (41 Vic., cap. 27), which assumes to authorize the corporation of Montreal, by by-law, to re-act an increase addition or penalty of ten per cent on all arrears of assessments not paid within a certain day, is unconstitutional and void, as being beyond the powers of a provincial legislature. The court held that the attempt to authorize the re-action of an “increase addition or penalty” was an interference with the subject of interest. The case referred to is a clear authority against the constitutionality of the Act now under consideration, and in view of the fact that the government of the province are not in the same position as a private individual would be under similar circumstances, and that the purchaser of Crown lands, or the holder of a lease or ferry charter, could not readily test the validity of the Act in the courts as he could do were his opponent a subject, whom he could bring into court in an ordinary action; in view, also, of the nature of the Act itself, I have less hesitation in recommending its disallowance, I recommend, therefore, that the said Act, being chapter 25 of the Statutes of British Columbia, passed in the forty-second year of Her Majesty’s reign, A.D. 1878, and intituled:—“An Act relating to the Crown Lands in British Columbia,” be disallowed.

Cap. 26.—“An Act relating to certain Ordinances and Acts.”

Cap. 27.—“An Act to amend the law respecting retail Liquor Licenses.”

Cap. 28.—“An Act relating to the British Columbia Loan Acts, 1874 and 1876.”

Cap. 29.—“An Act to amend the Mineral Act, 1878.”

Cap. 30.—“An Act to provide for employing Prisoners without the walls of Common Jails.”

Cap. 31.—“An Act to amend the law relating to the Legal Profession.”

Cap. 32.—“An Act to amend the School Tax Act, 1876.”

Cap. 33.—“An Act for granting certain sums of money required for defraying the expenses of civil government for the half-year ending 31st December, 1878, and for other purposes.”

Cap. 34.—“An Act for granting certain further sums of money required for defraying expenses of the civil government for the half-year ending 31st December, 1878, and for other purposes.”

The above Acts should be left to their operation.

Cap. 35.—“An Act to provide for the better collection of Provincial Taxes from Chinese.”

This Act has been held by the Supreme Court of British Columbia to be unconstitutional and void. The judgment has not been appealed from, and must be taken to be the law. As it is clearly the duty of this government not to allow an Act of this nature, which has been declared by the court to be *ultra vires*, to remain on the statute-book, I think it should be formally disallowed. I recommend, therefore, that the Act of the province of British Columbia, passed in the forty-second year of Her Majesty's reign, A.D. 1878, cap. 35, and intitled:—“An Act for the better collection of Provincial Taxes from Chinese,” be disallowed.

Cap. 36.—“An Act to amend the Assessment Act, 1876.”

This Act contains many detail provisions which no doubt will be found useful in connection with the collection of taxes, some of its provisions are very stringent and may work hardships, but so long as they are within the legislative authority of the province, their nature is not such as to call for an exercise of the power of disallowance. There are, however, certain provisions in the Act which call for remark, as being *ultra vires* of the provincial legislature. The 10th section enacts that when taxes are delinquent (*i.e.*, unpaid for a certain specified time), twenty-five per cent thereof shall be charged thereon and added thereto, and shall form part of such delinquent tax, and interest shall at once attach thereon at the rate of 18 per cent per annum. Provisions then follow for the collection of the amount by sale of the land, &c. According to the decision in the case of *Ross v. Torrance*, above referred to, the attempt to add the 25 per cent and the 18 per cent interest to be unpaid taxes, is void. Were the statute now under consideration of a nature similar to the “Act relating to the Crown Lands in British Columbia,” which has been recommended to be disallowed, I would feel called upon to make the same recommendation with respect to it. The objection to this Act, however, from a constitutional point of view, relates to the provisions which affect the amount merely of the tax; the other provisions, though in some respects stringent, are within the powers of the provincial legislature, and it must be presumed that they have been found necessary in the public interests, and they are not of such a nature as to call for interference therewith by the Dominion government.

Any person desiring to test the legality of the claim for the 25 per cent addition, and the 18 per cent interest, will have a convenient way of doing so by proceeding against the collector to restrain a seizure or sale, by testing the validity of the sale with the purchaser. In this respect the Act differs materially from the one which has been recommended for disallowance. Under all the circumstances, I think the better course will be to leave the Act to its operation, at the same time calling the attention of the British Columbia government to the above remarks, and to the case of *Ross v. Torrance* above referred to, in order that they may consider the advisability of the public interests of amending the Act next session in such a manner as will remove the constitutional objections thereto, and at the same time prevent the litigation and feeling of insecurity with respect to tax titles, which will undoubtedly arise if the Act be attempted to be enforced in its present shape. I recommend, therefore, that this course be followed.

Cap. 37.—“An Act to amend the Cariboo Wagon Road Tolls Act, 1876.”

This Act will be reported on at a future time.



Cap. 38.—“An Act to amend an Act to afford Owners and Occupiers of land a summary remedy in certain cases of Trespass.”

This Act is unobjectionable, and should be left to its operation.

Z. A. LASH,  
*Deputy Minister of Justice.*

I concur,

JAS. McDONALD,  
*Minister of Justice.*

*Orders in Council disallowing the Acts, chapters 25 and 35, published in the Canada Gazette on the 30th day of August, 1879, Vol. XIII., No. 9, page 284.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd October, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th September, 1879.

I have now the honour to report upon the Act passed by the legislature of British Columbia in the year 1878, cap. 37, and intituled :

“An Act to amend the ‘Cariboo Wagon Road Tolls Act, 1876.’”

“The Act is as follows :

“Section 2 of the “Cariboo Wagon Road Tolls Act, 1876,” shall be and the same is hereby repealed, and in lieu thereof the following shall be substituted :—

“There shall be levied and paid from and after the passing of this Act unto and to the use of Her Majesty, her heirs and successors, from all persons whomsoever by way of toll the sums following, that is to say :—

“For every pound avoirdupois of goods, merchandise, stores, productions and chattels, other than those hereinafter excepted, which shall respectively be carried from Yale in the direction of Cariboo, the sum of one cent.

“2. Provided that all plant and material used in the construction of the Canadian Pacific Railway shall be exempted from such toll under and subject to such regulations as the Lieutenant-Governor in Council may prescribe.

“3. This Act may be cited as the ‘Cariboo Wagon Road Tolls Amendment Act, 1878.’”

Section 2 of the Cariboo Wagon Road Tolls Act, 1876, repealed by the Act now under consideration is as follows :—

“There shall be levied and paid from and after the fifteenth day of May, next, unto and to the use of Her Majesty, her heirs and successors from all persons whomsoever by way of toll, the sums following, that is to say :—

“For every pound, avoirdupois, of goods, merchandise, stores, productions and chattels, other than those hereinafter excepted, which shall respectively be carried over or across the Alexandria Suspension Bridge, or over or across the Fraser River, within a distance of ten miles above and ten miles below the said bridge, the sum of half a cent.”

“For every pound, avoirdupois, of goods, merchandise, stores, productions and chattels, other than those hereinafter excepted, which shall respectively be carried from Clinton, in the direction of Cariboo, the sum of half a cent.”

And section 3 of that Act, which has not been repealed, is as follows :—

“Provided that no tolls shall be demanded of, or from, or paid by any person in respect of mining machinery, farming implements, wheat, beans, pease, barley and grain of all kinds, hay, roots, vegetables and other agricultural produce, the growth of the province, and all flour and meal manufactured in this province from wheat, beans, pease, oats, barley and grain of all kinds grown in the province, and all cattle and all articles and things coming in the direction of the seaboard from the interior of the province,

whether intended for export or home consumption, for the purposes of manufacture in the province, or any other purpose whatsoever."

The Minister of Justice, Mr. Blake, in reporting upon the Act passed in 1876, after referring to its provisions and to the provisions of the Act repealed by it, makes use of the following language :—

"It is obvious, therefore, that the Act now under consideration is in furtherance of a policy which has been pursued in British Columbia for several years, but the undersigned feels it his duty to call the attention of council to this legislation, which, in effect, places upon the consumers of imported goods the chief burden of maintaining the public roads which are established as well for the transport of articles of home productions."

"The undersigned does not recommend the disallowance of this Act, but he must point out that its principle might be so extended as to render it necessary to consider the question whether such legislation does not trench on the regulation of trade and commerce."

It will be observed that the section repealed imposes a tax upon such goods only as were carried over or across the Alexandria Suspension Bridge, or over or across the Fraser River within a certain distance of that bridge, or which are carried from Clinton in the direction of Cariboo, the toll being but one-half cent per pound; whereas, the Act now under consideration imposes a toll of one cent per pound upon goods carried from Yale in the direction of Cariboo.

I have the honour to submit that the question raised by the Minister of Justice in his report upon the Act, 1876, namely: Whether this Act does not trench on the regulation of trade and commerce to an injurious degree, should now be considered by council.

Should council determine that the Act should not be disallowed by reason of being an interference with the regulation of trade and commerce, another serious question with reference thereto should be considered.

It will be observed that the Act exempts only the plant and material used in the construction of the Canadian Pacific Railway, under and subject to such regulations as the Lieutenant-Governor in Council may prescribe.

Contractors' supplies, &c., are not exempt.

When this Bill was first introduced it did not contain the exemption clause now in it, and on the 9th August, 1878, Mr. John Robson, paymaster and surveyor of Canadian Pacific Railway Survey, addressed to the Hon. G. A. Walkem, Attorney-General of British Columbia, the following communication:

CANADIAN PACIFIC RAILWAY SURVEY, VICTORIA, B.C., 9th August, 1878.

DEAR SIR,—In looking over the 'Cariboo Wagon Road Tolls Amendment Act, 1878' (which I saw for the first time to-day), and construing it with the principal Act, it appears to me that its provisions are likely seriously to affect the railway interests of the country.

According to the railway policy of the Dominion government, the work of construction will be commenced at Yale next summer, and continued upwards, thence through the canyons of the Fraser. It appears to me, railway materials and supplies, machinery and appliances essential to railway construction, passing out of Yale to any point beyond the toll-gate, would be liable to the toll imposed by the above recited Act.

When it is mentioned that work—and the heaviest part of the work—is intended to be commenced almost immediately, beyond the toll-gate, it must be seen at once that such an impost, meeting railway construction at the very threshold, cannot fail seriously to operate against it,—if, indeed, it would not render such works practically impossible.

Respectfully submitting the matter to your consideration, I beg to request that, should the assumption that the toll in question would apply to railway material, &c., be

correct, you will be good enough to have a provision inserted in Act exempting such railway material, &c.

"I have, &c.,

"JOHN ROBSON,

*"Paymaster and Purveyor, C.P.R.S."*

To which the following reply was received :—

11th August, 1878.

"In reply to your letter of the 9th inst., recommending the inconvenience of applying the Road Tolls Act to railway plant, or material passing the Yale toll gate, I have to assure you that whenever construction is commenced, the government will afford every facility for its being carried on expeditiously, and so far as they are concerned, as cheaply as possible, arrangements just to the Dominion and province, can then be made."

On the 13th August, Mr. Robson addressed to Mr. Walkem the following :—

"I have the honour to acknowledge the receipt of your letter of Sunday last, replying to mine of the 9th inst., and I regret that its contents do not appear to be altogether satisfactory.

"It is known to be the intention of the Dominion government to place a section of that portion of the Canadian Pacific Railway lying within British Columbia, under contract as soon as possible after the parliament meets next February, and, with that view, it is proposed to seek tenders for the same before the present year is out. Should the Act under discussion become law meanwhile, it is obvious that it must exert a most serious influence upon the tenders, inasmuch as intending contractors would undoubtedly make allowance for the toll in question, in estimating the value of the work; and it seems scarcely necessary that a toll of one cent a pound on all the railway plant and supplies necessary for such heavy works as are contemplated, must amount to something enormous; nor does it seem to be just, seeing only a very short portion indeed of the road in respect of which it is proposed to levy the toll, will be used in transporting such material.

"I beg, therefore, most respectfully to submit that however willing your government might be to meet the Dominion government in a fair and liberal spirit, 'whenever construction is commenced,' the remedy would come too late, as the tenders would have been sent in and the contract awarded at the greatly increased price, or what is far more likely to happen, the tenders would be rejected on account of undue appreciation in prices thus occasioned, and instead of the province 'making a haul,' out of the Dominion, its interests and revenues would suffer on account of consequent delay in railway construction."

"I would, therefore, respectfully but most earnestly repeat the suggestion that a provision be yet inserted in the Act referred to, exempting materials and supplies used in railway construction.

"I have, &c.,

"JNO. ROBSON,

*"Paymaster and Purveyor, C. P. R. S."*

On the 17th August copies of the correspondence with Mr. Walkem were sent by Mr. Robson to the Department of Public Works, and, on the 4th September, Mr. Robson wrote to the Department of Public Works, as follows :—

"Adverting to my letter of the 17th ult., referring to a bill passed through the provincial legislature, and inclosing correspondence between the Hon. Mr. Walkem and myself thereanent, I have further to report that the point contended for, was subsequently conceded, and the bill sent back to the House for insertion of exemption clause."



"I now beg to point out what appears to me objectionable features of the amended bill, a copy of which is inclosed herewith."

"I. The exemption is only partial, not including supplies employed and consumed in railway construction, a toll of twenty dollars a ton on which seems not only enormous but unjust, when it is considered that railway works to the value of several millions will have to be constructed almost within the shadow of the toll gate. It seems impossible to doubt that such an impost will exert a serious influence upon the tenders for the work."

II. It will be observed that the modicum of relief given in the Act is made contingent on a revocable Order in Council—rather insecure ground it is to be apprehended, for contractors to go upon in tendering for the work."

"There seems reason to fear that the measure under consideration is calculated to operate very prejudicially as against railway construction in the particular locality referred to, by causing the tenders now invited to be much higher than they would otherwise be, and it may, therefore, be matter for consideration whether the Dominion government would not be justified in disallowing the Act in question."

And on the 8th October, 1878, Mr. Robson wrote as follows:—

"I have the honour to acknowledge your letter of the 28th, and to report thereon as follows:—

"The fact that the words 'and supplies' had been erased from the exemption clause when it came before the legislature, taken in connection with the further fact that the point was fully discussed in the House, and a decision arrived at, not to exempt supplies," affords the most conclusive evidence that the words used in the Act referred to are not intended to cover supplies of all descriptions.

"A reference to files of the Victoria newspapers will sufficiently establish the above mentioned facts."

In my opinion supplies or articles of food, &c., for the use of those engaged in the construction of the Canadian Pacific Railway, do not come within the exemption clause of the Act.

I have the honour to recommend that for the two reasons above referred to, viz.:—

(1.) The interference with the regulation of trade and commerce, and,

(2.) The possible imposition of unfair charges upon the Dominion Exchequer, the said Act passed by the legislature of British Columbia, and intituled: "An Act to amend the Cariboo Wagon Road Toll Act, 1876," be disallowed.

JAS. McDONALD,  
Minister of Justice.

*Order in Council disallowing the Act, Chapter 37, published in the Canada Gazette on the 4th day of October, 1879, Vol. XIII., No. 14, Page 471.*

## BRITISH COLUMBIA, 42ND VICTORIA, 1879.

2ND SESSION—3RD PARLIAMENT.

*Lieutenant-Governor British Columbia to Secretary of State.*

GOVERNMENT HOUSE, VICTORIA, B.C., 3rd July, 1879.

SIR,—I have the honour to inclose to you herewith a petition addressed to his Excellency the Governor General in Council, by Mr. E. L. Derby, and which I have been requested to forward.

I have, &amp;c.,

A. N. RICHARDS,  
*Lieutenant-Governor.*

*Petition of Mr. E. L. Derby to His Excellency the Governor General.*

*To His Excellency the Most Noble the Marquis of Lorne, Governor General of Canada, in Council Assembled :—*

The humble petition of Ellis Luther Derby, of Riverside, British Columbia,—

*Showeth :*

That your petitioner, in 1878, obtained the passage of an Act through the House of Assembly of British Columbia, intituled : “ An Act for dyking and reclaiming certain lands at Chilliwack, Sumass and Matsqui.”

By that Act certain dying works were to be carried out, and the costs of preparing plans and specifications, in pursuance of the said Act, were to be paid by your petitioner.

The said Act was brought in as a private Act, and all expenses connected therewith were paid by your petitioner, in pursuance of the Standing Orders of the House of Assembly of British Columbia.

Your petitioner immediately, on the passage of the said Act, commenced work, and has expended a large amount of money in carrying out the objects and intention of the said Act.

On the 29th day of April, 1879, an Act was passed by the legislative assembly, without any intimation or notice to your petitioner, intituled : “ An Act respecting the Sumass Dyking Act, 1878.”

By this Act, under section 1, your petitioner is compelled to pay additional costs of survey over those contemplated by him, when he first undertook the work ; and by the 3rd section, in the event of your petitioner failing or refusing to refund the costs of surveys, or to carry out the instructions of the chief commissioner in the construction of the dyking works, the Governor in Council shall have power to confiscate the whole of the works.

The government of British Columbia now claim from your petitioner, under the provisions of the last mentioned Act, certain expenses incurred by the government prior to the plans and specifications referred to in the first mentioned Act, and the government further claims the right to impose burdens on your petitioner, never contemplated by him, when he commenced the said works.

Your petitioner, therefore, prays your Excellency, that assent may be refused to the said Act.

And your petitioner will ever pray.

ELLIS LUTHER DERBY.

*Lieutenant-Governor Richards to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, VICTORIA, November 19, 1879.

SIR,—Referring to a despatch from the Under Secretary of State, of the 10th September last, inclosing a copy of a petition from Mr. E. L. Derby, addressed to his Excellency the Governor General, praying for the disallowance of the "Sumass Dyking Act, 1878," I have now the honour to inclose, according to the request put forth in the said despatch, a copy of a minute of my Executive Council, together with other documents therein referred to, by which it will be seen that my Executive Council respectfully request that the said Act may be allowed to take its course, and that the prayer of Mr. Derby's petition be refused.

I have, &c.,

A. N. RICHARDS,  
*Lieutenant-Governor.*

*Report of Hon. Attorney-General Walkem approved by His Honour the Lieutenant-Governor in Council on the 11th November, 1879.*

VICTORIA, B.C., 11th November, 1879.

The undersigned, to whom has been referred a copy of a petition forwarded by Mr. E. L. Derby to his Excellency the Governor General, praying that "An Act respecting the Sumass Dyking Act, 1878," should be disallowed, has the honour to make the following report upon the statements contained in the petition:—

The above mentioned Act was passed by the legislative assembly in 1879, without a division, and with the support and unqualified approbation of the members of the city and district of New Westminster, whose constituents were and are most immediately and deeply interested in Mr. Derby's success.

The scheme of reclaiming and dyking the inundated lands of New Westminster district, was first practically considered by the government in 1876, when they spent \$900 on surveys and plans of the work. No portion of this outlay has ever been charged to or claimed from Mr. Derby, although he reaped the advantage of it. Subsequently, Mr. Derby applied for a charter for the work, alleging that he had the means to carry out the project. Further surveys were made, and elaborate plans prepared at his request and on his behalf, under the supervision of the Lands and Works Department, Mr. Derby having first agreed to pay for them. The agreement is embodied in section 36 of Mr. Derby's Act of 1878, and has not been changed. The amending Act of 1879 simply gives the government more specific powers for collecting the money, as Mr. Derby had repeatedly endeavoured to evade its payment.

Both the late and present government, as well as the committee on private bills, were united in opinion upon Mr. Derby's liability. The question is, however, now set at rest, as Mr. Derby paid the amount in dispute some weeks ago.

The further provisions in the Act of 1879, which confer upon the Lieutenant-Governor in Council the power of cancelling Mr. Derby's charter, in the event of his neglecting or refusing to comply with its conditions, do not differ from the provisions of section 34 of the Act of 1878. It will be seen that under this section it is enacted that, on failure of Mr. Derby to carry out the agreement contained in the Act (of 1878), the Lieutenant-Governor in Council may cancel it, and transfer all of Mr. Derby's privileges to any other person, with a view of securing the completion of the works.

The principal conditions of the agreement are set forth in sections 11, 12 and 13 of this Act, whereby Mr. Derby agreed to effectually dyke certain lands mentioned, according to the plans approved of by the government, and to perform the work as appears in the last sentence of section 13, under the supervision of the Lands and



Works Department, or its engineer, whose expenses were and are to be paid by Mr. Derby.

Soon after the commencement of the work by Mr. Derby, complaints of delay, neglect and defiance of the orders of the superintending engineer, were frequently made against him, by settlers interested in the scheme, and by the engineer himself. Annexed are extracts from some of the numerous letters and reports of the latter, which will show the extent, and in some cases, the disastrous result of Mr. Derby's mismanagement, as well as the almost habitual disregard with which he treated the engineer's directions, and the orders of the Lands and Works Department. Ample reasons for the cancellation of the charter were from time to time placed before the Government, but consideration for those who had been induced by Mr. Derby to invest their means in the enterprise, influenced the chief commissioner against recommending such a step.

As a milder and more lenient alternative, the Act of 1879 was submitted to, and unanimously approved of by the House, in order that Mr. Derby might clearly understand the duties he had undertaken to perform. The only real difference between the two Acts is, that by the first the government are invested with the power of cancelling Mr. Derby's charter and transferring its privileges to others; while by the second they are entitled to cancel, and take the benefit of the charter themselves. Such a difference could not possibly affect Mr. Derby in the event of his loss of the charter, and can therefore form no ground of complaint on his part.

It may be further observed that at the present time Mr. Derby has, owing to his own negligence, as the superintending engineer states, been obliged to apply for an extension of the period fixed, viz., July, 1880, for the completion of his work.

Since the passing of the Act of 1879, more diligence and earnestness have been shown in the prosecution of the work; and it may be remarked that had the work received during 1878 anything approaching the same attention as it now receives, the legislature would not in all probability have been moved to interfere in the matter. The Act complained of will directly benefit the Dominion government, as any vacant or reclaimed Crown lands within the proposed lines of dykes becomes their property, as part of the Canadian Pacific Railway belt. The only interest the province now has in the scheme is to see, on behalf of the settlers in the dyking district, that Mr. Derby carries on his agreement in good faith.

The statement made in Mr. Derby's petition that the Act of 1879 imposes new burdens, is manifestly incorrect, and is refuted by the Act itself.

The undersigned, therefore, recommends that his Excellency the Governor General be respectfully moved to refuse the prayer of Mr. Derby's petition and allow the Act of 1879 to take its course.

GEO. A. WALKEM,  
*Chief Comr., and Attorney General.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 15th May, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th May, 1880.

I have the honour to report upon the statutes passed by the legislature of British Columbia in the year 1879, received by the Hon. the Secretary of State on the 2nd day of July, 1879, as follows:—

Cap. 1.—“An Act to further amend the Bills of Sale Ordinance, 1870.”

This Act requires no special observation; I recommend that it be left to its operation.

Cap. 2.—“An Act to enable the Lieutenant-Governor in Council to grant Charters for the erection of Toll Bridges.”

It appears from a communication sent to the Hon. the Minister of the Interior, from certain inhabitants of Victoria, B.C., that certain persons had applied to the

Lieutenant-Governor in Council for a charter giving them authority to build a bridge over a part of the Victoria harbour, and a strong protest was made against the building of any such bridge.

The Premier of British Columbia, the Hon. G. A. Walkem, while here in February last, informed me that his government had done nothing towards granting the application, and that, as the waters of the harbour where the bridge was proposed to be built were navigable, he did not claim for his government the power to authorize the erection of the bridge.

It will be observed that the Act is expressly confined to such bridges, as are under the control of the legislature of British Columbia. The statute does not even assume to empower the provincial government to authorize the construction of a bridge which might interfere with navigation, and it is quite clear that express words in the statute assuming to give such authority would be of no effect, as any person attempting to obstruct by a bridge, otherwise, without the authority of the parliament of Canada, the navigation of any river, harbour, bay, arm of the sea, or other navigable water, could be prevented by injunction from causing the obstruction, and in certain events the obstruction if created, might, as any other nuisance, be abated by the public without process of law.

I recommend that the Act be left to its operation.

Cap. 9.—“An Act respecting Coroners.”

I recommend that this Act be left to its operation as Acts of a similar nature in other provinces have not been interfered with.

I desire to point out, however, that the right of a provincial legislature to legislate respecting coroners has, in certain respects, been questioned as entrenching upon the subject of criminal law and criminal procedure,

Cap. 12 and cap. 13.—(These Acts have been reported upon separately.)

Cap. 15.—“An Act respecting the Sumass Dyking Act, 1878.”

This Act will be reported upon hereafter.

Cap. 33.—“An Act to amend the ‘Licenses Ordinance, 1867.’”

This Act will be reported upon at another time.

Cap. 30.—“The Public School Act, 1879.”

Section 25 of this Act is clearly beyond the power of the legislature to pass, as it expressly assumes to make a person wilfully making a false declaration of his right to vote at the election of the school trustees guilty of a misdemeanour.

The provisions of the section were evidently overlooked when passing through the House.

I recommend that the attention of the Lieutenant Governor be called thereto, with a request that his government will in due time promote the repeal of the section.

Meantime, I recommend that the Act be left to its operation.

I recommend that the several Acts, chapters 4 to 8, 10, 11, 14, 16 to 22, 24 to 29, 31 to 37, be left to their operation.

JAMES McDONALD,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 15th May, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th May, 1880.

I have the honour to report upon two Acts passed by the Legislature of the province of British Columbia, in the year 1879, received by the Hon. the Secretary of State, on the 2nd day of July, 1879, as follows:—

Cap. 12.—“An Act to amend the Practice and Procedure of the Supreme Court of British Columbia, and for other purposes relating to the better Administration of Justice.”

A very strong protest against this Act, by reason of the provisions of the 17th section, has been received from the three judges of the Supreme Court at British Columbia.

The 17th section empowers the Lieutenant-Governor, by Order in Council, to make rules to be styled "rules of court," for carrying the Act into force, for regulating the sittings of the court, &c., for pleading, practice and procedure, duties of officers, rights of counsel, &c.

The judges in effect contend that they are by this section placed more under the control of the local government than they should be, claiming that they are Dominion officers, and that their independence as judges may be interfered with by the powers given to the Lieutenant-Governor in Council under the 17th section of the Act.

With the exception of the 14th section, to which reference will be made below, the judges do not make any other objection to the Act, and from the correspondence transmitted, it appears that, with the exception of the 14th and 17th sections, the Act was substantially framed by the judges themselves.

The legislative authority over the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts, which is vested in the provincial legislatures, seems clearly to authorize the making of the provisions contained in the 17th section, and unless there be grave reason to the contrary, the course which has been adopted by this government, heretofore, in dealing with provincial legislation, would seem to require that provisions so clearly within the powers of the local legislature, should be left to their operation, notwithstanding that they, or some of them, may not accord with the views which will be entertained respecting the expediency of such provisions.

Had the provincial legislature seen fit to confer on the judges themselves the power of making the rules of court, as has been done in England, in Ontario and other provinces, and as was done by the parliament of Canada when establishing supreme and exchequer courts, such a course would, I think, have been more satisfactory. The Attorney-General of British Columbia has, however, made a report setting out the reasons why power was given to the Governor in Council instead of judges, to make the rules of court. A copy of this report was transmitted by the Lieutenant-Governor to this government.

The 14th section is as follows:—Courts of assize and nisi prius, or of oyer and terminer and general jail delivery, may be held, with or without commissions, at such time and places as the Lieutenant-Governor may direct; and when no commissions are issued the said courts, or either of them, shall be presided over by the chief justice, or one of the other judges of the said supreme court, either of whom, as the case may be, may, in civil proceedings reserve the giving of this final decision on questions raised at the trial, and this decision, whenever given, shall be considered as if given at the time of the trial.

The judges are of opinion, that so far as this section assumes to change the present practice of holding courts for the trial of criminal cases, it is beyond the powers of the provincial legislature, as affecting procedure in criminal matters.

In the case of the *Queen vs Amer*, reported in 42 Q. B. Reports of Ontario, page 391, Mr. Justice, now Chief Justice Adam Wilson, expresses opinions which go far to show that the provisions of the section now under consideration are within the competency of a provincial legislature.

The matter is by no means so clear as to warrant me in recommending the disallowance of the Act. On the whole, therefore, I recommend that the Act be left to its operation.

Cap. 13.—"Judicial District Act, 1879."

This Act has also been protested against by the judges. Their protest is against three Acts which they declare should be taken as one piece of legislation, namely:—

"The Better Administration of Justice Act, 1878."

"The Judicature Act, 1879," (being cap. 12 above referred to) and "The Judicial District Act, 1879."



Their protest is dated in Victoria, B.C., 29th April, 1879, and was not, of course, received here until the month of May, 1879.

"The Better Administration of Justice Act, 1878," was left to its operation by Order in Council dated 17th March, 1879, therefore the protest, so far as it refers to that Act, cannot now be considered.

"The Judicial District Act, 1879," seems to be a necessary adjunct to "The Better Administration of Justice Act, 1878," and as the policy of that Act has been adopted by the parliament of Canada, and provision has been made for the salaries of the two additional judges provided for by that Act, no other course seems open than to leave the Act now under consideration to its operation, and I recommend accordingly.

JAS. McDONALD,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 30th June, 1880.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd June, 1880.

I have the honour to report upon the three Acts of the legislature of the province of British Columbia reserved in my last report, namely:—

Cap. 3.—"An Act to protect Winter Stock Ranges." I recommend that this Act be left to its operation.

Cap. 15.—"An Act respecting the 'Sumass Dyking Act, 1878.'" The disallowance of this Act was prayed for by Mr. E. L. Derby, on the ground that it was an interference with his rights. It is not necessary to pass any opinion upon the fairness or unfairness of the provisions of the statute, because, as I think, it is clearly within the legislative authority of the provincial legislature, and as no Dominion or Imperial interests are involved, it should be left to its operation. I recommend accordingly.

Cap. 23.—"An Act to amend the 'Licenses Ordinance, 1867.'" The report upon this Act was delayed, as the question whether it was not an interference with the regulations of trade and commerce seemed to require consideration. I think, however, that it should be left to its operation, as it would seem to come within the powers of the provincial legislature, as given by subsection 9 of section 92, of the British North America Act, 1867, namely, the power respecting shop, saloon, tavern, auctioneer, and other licenses. Even if there be doubts upon the subject, the course which has hitherto been pursued with respect to similar enactments would not warrant a disallowance of the Act, and would require that it should be left to its operation, leaving any person who may question its constitutionality, to test the matter in the usual way before the courts.

JAS. McDONALD,  
*Minister of Justice.*

## BRITISH COLUMBIA, 43RD VICTORIA, 1880.

3RD SESSION—3RD PARLIAMENT.

*Report of the Hon. the Minister of Justice approved by His Honour the Deputy of the Governor General in Council on the 29th July, 1881.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th July, 1881.

I have the honour to report with respect to the Acts passed by the legislature of British Columbia, in the year 1880, as follows:—

I recommend that this power of disallowance be not exercised with respect to the following, viz., chapters 1 to 27 inclusive, 30, 31 and 32.

With reference to chapter 4, intituled: "An Act to abolish priority of and amongst execution creditors," I would remark that the Act is similar to an Act passed by the legislature of Ontario in the year 1880, which has been left to its operation. I append hereto an extract from the report of the Minister of Justice upon the Ontario Act, and recommend that the attention of the Lieutenant-Governor of British Columbia be called thereto.

Chapter 10, intituled: "An Act respecting the fraudulent preference of creditors by persons in insolvent circumstances," seems to entrench upon the subject matter of insolvency, but the question is doubtful, and no inconvenience can arise by leaving the Act to its operation.

Chapter 28, intituled: "An Act to amend the Cariboo Wagon Road Tolls Act, 1876," is precisely the same as the Act passed by the legislature of British Columbia with the same title in the year 1878, and which was disallowed upon the recommendation of the Minister of Justice, and for the reasons set forth in his report to council, dated 24th September, 1879. A copy of that report has already been transmitted to the Lieutenant-Governor of the province. The reasons for the disallowance of the previous Act apply to the present one, which should, I think, also be disallowed.

Chapter 29, intituled: "An Act respecting tolls on the Cariboo Wagon Road," is as follows:—

"(1.) Notwithstanding any Act to the contrary, there shall be levied and paid unto and to the use of Her Majesty, her heirs and successors, from all persons whomsoever, by way of toll; upon every pound avoirdupois of rice carried from Yale in the direction of Cariboo, a sum of two cents per pound in lieu of one cent per pound."

"(2.) This Act shall not come into force until a day fixed by proclamation by the Lieutenant-Governor."

The reasons for the disallowance of the above mentioned Act apply also to this one, which, I think, should also be disallowed. I, therefore, recommend that the Acts passed by the legislature of British Columbia, in the year 1880, chaptered twenty-eight and twenty-nine, intituled respectively: "An Act to amend the Cariboo Wagon Road Tolls Act, 1876," and "An Act respecting tolls on the Cariboo Wagon Road," be disallowed.

A. CAMPBELL,  
*Minister of Justice.*

*Extract from the Report of Minister of Justice, dated 11th March, 1881, upon Cap. 10, of Acts of Ontario, 1880, referred to in foregoing report.*

Taking this Act section by section, much can be said in favour of the view that its provisions are within the legislative authority of the provincial legislature, but, taking

its effect, as a whole, much can be said in support of the contention that it entrenches upon the subject of bankruptcy and insolvency, over which the parliament of Canada has exclusive legislative authority.

In view of the doubts which exist with respect to the matter ; in view also of the fact that the insolvency laws of the Dominion have been repealed ; in view also of the provisions of section 28 of the Act which provides that it is not intended to interfere with the insolvency laws which may, from time to time, be in force, but is intended to be subject to such laws, and subject, as aforesaid, to apply to all debtors, whether solvent or not ; in view also of the fact that if the power of disallowance be not exercised any person wishing to test the constitutionality of the Act in any of the courts will be at liberty to do so.

I recommend that the power of disallowance be not exercised with respect to the said Act.

JAS. McDONALD,  
*Minister of Justice.*

*Order in Council disallowing Chapters 28 and 29, published in the Canada Gazette on the 30th day of July, 1881, Vol. XV., No. 5, page 143.*

## BRITISH COLUMBIA, 44TH VICTORIA, 1881.

4TH SESSION—3RD PARLIAMENT.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th June, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th June, 1882.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the following Acts passed by the legislature of British Columbia, in the year 1881, 44th Victoria, received by the Secretary of State of Canada on the 21st June, 1881, and is of opinion that they are unobjectionable, and may be left to their operation, viz., chapters 1 to 14, 16 to 28.

With reference to the Act, chapter 1, intituled : "An Act to carry out the objects of the better Administration of the Justice Act, 1878," and "The Judicial District Act, 1879," the undersigned would observe that the provisions of this Act have been objected to by the judges of British Columbia, but in view of the fact that your Excellency has already sanctioned an Order in Council, under section 7, of the Act, the exercise of the power of disallowance has in effect been decided against, and this Act should therefore be left to its operation.

Upon the remaining Act, chapter 15, intituled : "An Act to amend the Gold Mining and Mineral Acts," the undersigned has the honour to report that objections have been taken by the judges of British Columbia to the provisions of section 10, but while not expressing the opinion that the provisions of that section are entirely free from objection, the undersigned thinks that those provisions are so clearly connected with the administration of justice in the province, and the jurisdiction of a provincial court, that the power of disallowance should not be exercised with reference to this Act, and recommends accordingly.

A. CAMPBELL,  
*Minister of Justice.*



## BRITISH COLUMBIA, 45TH VICTORIA, 1882.

5TH SESSION—3RD PARLIAMENT.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 12th May, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th May, 1883.

*To His Excellency the Governor General in Council :*

The undersigned has had under consideration the Acts passed by the legislature of the province of British Columbia, in the session of 1882, which are chaptered and intitled as follows, viz., chapters 1 to 7 and 9 to 18.

The undersigned respectfully recommends that the Acts mentioned be left to their operation, save as regards chapter 8, which, for reasons given in a separate report, the undersigned recommends be disallowed.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 12th May, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th May, 1883.

The undersigned would respectfully call attention to chapter 8, intituled : "An Act to consolidate and amend the Laws relating to Gold and other Minerals, excepting Coal," passed by the legislature of British Columbia in 1882, 45th Viet., the undersigned observes that by section 4 of this Act the Lieutenant-Governor is authorized to appoint such persons as he may deem proper as gold commissioners or assistant gold commissioners, either for the whole province, or for any particular districts therein.

By section 5 there purports to be established a court or courts in mining districts, to be presided over by a gold commissioner or assistant commissioner, and by section 6 it is declared that each of those courts "shall be a court of record, and shall have jurisdiction as a court of law and equity, to hear and determine all mining disputes arising in the district or locality in which it is appointed to be held, including actions arising upon contracts between any free miners and other persons, relating to the supply to such free miners, of goods, merchandise, materials, or implements used in mining, or in connection therewith, and the gold commissioner shall have power in such disputes or actions, to give such judgment as he may deem just, and to enforce the same according to the practice of the supreme court or any superior court, by writ of execution, process of contempt, proceedings for attachment of debts or other process, or by any means provided by this Act."

By other sections of the Act the jurisdiction of the mining court may be exercised by every county court, and appeals are allowed from the mining court to the supreme court, or any superior court sitting in the judicial district within which the mining court appealed from may be situated.

It will be seen, therefore, that by this Act the appointment of a judge performing judicial functions, whose appointment, under "The British North America Act, 1867," should be made by the Governor in Council, is in effect to be made by the Lieutenant-Governor of British Columbia.

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The undersigned is of opinion that legislation thus offending against the constitutional principles laid down by the British North America Act, 1867, should not be allowed to go into operation, and he humbly advises that the Act in question be disallowed.

A. CAMPBELL,  
*Minister of Justice.*

*Order in Council disallowing the Act mentioned, published in the Canada Gazette on the 19th day of May, 1883, Vol. XVI., No. 46, page 1914.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 15th May, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th May, 1883.

*To His Excellency the Governor General in Council :*

The undersigned respectfully recommends that the annexed case, respecting the status of the supreme court of British Columbia, and the powers of the legislature of that province to legislate in respect of procedure in that court, and the residences of the judges thereof, be referred to the Supreme Court for hearing and consideration, and that the court may hear and consider the same, and certify to the Governor in council their opinions upon the questions submitted, and that if your Excellency approve of this report, a copy thereof and of the said case, be transmitted to the registrar of the Supreme Court.

A. CAMPBELL,  
*Minister of Justice.*

## BRITISH COLUMBIA, 46TH VICTORIA, 1883.

1ST SESSION—4TH PARLIAMENT.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 17th October, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th September, 1883.

*To His Excellency the Governor General in Council :*

The undersigned begs leave to report that he has had under consideration the following Acts passed by the legislature of the province of British Columbia, namely :— 46 Vic. (1883), chap. 26, an Act intituled : “An Act to incorporate the Fraser River Railway Company,” and chapter 27, intituled : “An Act to incorporate the New Westminster Southern Railway Company.”

The 9th section of the Act incorporating the Fraser River Railway Company is as follows :—

“9. The company may lay out, construct, acquire, equip, maintain and work a continuous line of railway, with double or single track, of iron or steel, and uniform gauge of four feet and eight and one-half inches from the 49th parallel, north latitude, at a point between Seiniahends Bay and the eastern line of township 22, New Westminster district, to some point on the Canadian Pacific Railway between the eastern line of township 27, New Westminster district, and the western terminus of the Canadian Pacific Railway, and from that point, or some point west of that point on the said Canadian Pacific Railway to the city of New Westminster.”

The 10th section of the Act incorporating the New Westminster Southern Railway Company is as follows :—

“10. The company and their agents or servants shall have full power under this Act to construct a railway with double or single track, of four feet eight and one-half inches gauge from some point near the 49th parallel of north latitude, between Seiniahends Bay and township 16, in the district of New Westminster, to the city of New Westminster and to some point on Burrard Inlet, and to construct all necessary bridges over rivers crossing the said line between the above points, but so as not to impede navigation.”

By reference to the report of the chief engineer of government railways, dated 2nd June, 1883, with maps A and B annexed to this report, the area within which the two companies may construct railways will be seen. Each company is given power to construct a railway from the boundary of the province, to points within the province.

It is possible that the undertakings come within exception (a) of the 10th paragraph of the 92nd section of the British North America Act, 1867, by which local works and undertakings of the following class, namely :

“Lines of steam and other ships, railways, canals, telegraph and other works and undertakings connecting the province with any other or others of the provinces or extending beyond the limits of the province,” are declared not to be within the legislative authority of the legislatures of the provinces.

However, it is unnecessary to consider whether these Acts are or are not within the legislative authority of the province of British Columbia, for it is clear from them that the objects which the corporations have in view are contrary to the legislation of parliament and to the settled policy of the country. There can be no doubt that in case these railways are constructed they will direct trade from Canada to the United States, and from the Canadian system of railways to the United States system of railways.



The policy of the Government in this behalf, confirmed by parliament, was given expression to in the following clause of the contract between the government of Canada and the Canadian Pacific Railway Company, dated 21st October, 1880:—

“15. For twenty years from the date hereof, no line of railway shall be authorized by the Dominion parliament to be constructed south of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run south-west or to the westward of south-west; nor to within fifteen miles of latitude 40, and in the establishment of any new province in the North-west Territory, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period.”

For these reasons, which the undersigned has had occasion previously to state more fully than it is now necessary to do, he respectfully recommends that the said Acts, chapter 26, “An Act to incorporate the Fraser River Railway Company,” and chapter 27, “An Act to incorporate the New Westminster Southern Railway Company,” be disallowed.

A. CAMPBELL,  
*Minister of Justice.*

*Order in Council disallowing the Acts above mentioned published in the Canada Gazette on the 20th day of October, 1883, Vol. XVII., No. 16, page 584.*

*Mr. Theodore Davie to the Hon. the Minister of Justice.*

OTTAWA, 14th June, 1883.

SIR,—A petition to His Excellency the Governor General will shortly be forwarded, signed by the settlers of the Matsqui Prairie, British Columbia, praying for the disallowance of a private Act passed during the last session of the British Columbia legislature—No. 22—and intitled: “An Act to amend the ‘Sumass Dyking Act, 1878.’”

An informally drawn petition has already been received by me for presentation, and is now in my possession, signed by all the settlers in the district excepting one, but as three or four weeks will elapse before the new and regularly drawn petition, which I have sent for, will have been signed and have reached its destination, I desire, on behalf of the settlers of the Matsqui Prairie, to at once state the grounds of their objection to a measure which, if allowed to pass into law, will cause the loss to many of their homesteads, and very seriously distress them all.

The settlers and the promoter of the objectionable bill are the only parties whose interests are affected by the measure, yet the same was passed by the House of Assembly against the unanimous protest of the settlers.

The settlers denounce the amendment as contrary to reason and natural justice and equity, and on this ground—and the same having been passed against their protest—base their claim to its disallowance by his Excellency. I respectfully quote the remarks of Chief Justice Draper in the case “*re Goodhue*,” 19 Grant’s Chancery Reports. At page 382 he says: “\* \* Private Acts of parliament are upheld as common modes of assurance, being founded upon the actual or implied assent of those whose interests are affected. \* \* But this power of binding private rights by Acts of parliament is, as Sir William Blackstone suggests, to be used with due caution.” And at page 384 (19 Grant) the same learned judge says: “In regard to the absence of a second chamber, it may be further observed, so far at least as estate or private bills are concerned, that as such bills involve ordinarily no mere party political consideration, all those whose interests are or may be touched, have a right, in the first place, to expect a careful examination of their contents on the part of the provincial executive, and a withholding of the royal assent, if it is found that the promoters of the bill are seeking advantages at the expense of others, whose interests are as well grounded as their own. And further if from oversight, or any other cause, provisions should be inserted of an objectionable character, such as the deprivation of innocent parties, of actual, or even possible

interests, by retroactive legislation, such bills are still subject to the consideration of the Governor General, who, as representative of the sovereign, is intrusted with authority, —to which a corresponding duty attaches, to disallow any law contrary to reason or natural justice and equity” \* \* \* “it” (private legislation) “does not become law until the Lieutenant-Governor announces his assent, after which it is subject to disallowance by the Governor General,” and at page 385, in speaking of the limit which the constitution applies to the legislature, when acting within the scope of its authority, the same learned judge continues “It does provide checks, for the Lieutenant-Governor may withhold the necessary assent, or the Governor General may disallow Acts to which his subordinate has assented.” So much of the learned judge’s judgment as I have quoted is concurred in by the court, and see per Morrison, J., at page 427.

The “Sumass Dyking Amendment Act, 1883,” revives rights of action and advantages to the promoter of the Bill, which his failure to comply with the principal Act had forfeited, and therefore we say is *ex post facto* and unjust. If it be suggested that the promoter has complied with the former Act, or has rights under that Act, then we reply, let him pursue those rights, and what is the need of this amendment which is so objectionable to the settlers?

The former or principal Act (*i. e.* the Sumass Dyking Act, of 1878), as to section 12, was the embodiment of a contract between the promoter, Mr. Derby, and the Matsqui settlers, to dyke their farms. The scheme was an adventure from which in the event of success, the promoter would reap a handsome return, in the shape of assessments to be levied upon the settlers’ lands, augmented by a government grant of several thousands of acres of land. The Act contemplated the dyking of other lands of the Fraser River also (*vide* sections 11 and 13), but no attempt was made to dyke any other than the Matsqui portion.

It will be observed that as a protection to the settlers, section 12 contemplates three conditions to the promoter enjoying the benefits of the Act.

1. Effectual dyking.
2. Dyking agreeably to plans and specifications then in the office of the Commissioner of crown lands and works.
3. Absolute protection from the overflow of the Fraser River.

Under no less stringent terms would the settlers consent to countenance and pay for a dyke, which, under section 31 of the Act, for all time, they would be bound to maintain and keep in repair.

The criterion of effectual dyking, mentioned in the original written articles submitted by Mr. C. B. Sword, on behalf of the promoter of the original Bill, to the settlers, and accepted by them, was that the dyke should withstand a similar rise to that which took place in 1876, being the highest water upon record. This same criterion is also incorporated in the Act, section 8, which says: “In ascertaining whether any particular piece of land is now liable to overflow from the Fraser River, the height to which the water reached in the summer of 1876 shall be the criterion.”

Although the Sumass Dyking Act of 1878 varied from the written proposal submitted by Mr. Sword to the settlers—by extending the time contemplated for completion (*vide* section 13) until the 1st July, 1880,—still the settlers waived any ground of complaint on that score.

After the passage of the Act (1878), some show was made by the promoter of an attempt to carry out his obligations, but soon disposed of the whole of his privileges under the Act to Mr. C. B. Sword. Work of a certain class was continued at intervals, but the specifications were ignored in essential particulars, and in everything pertaining to the work wilful negligence and inability were displayed, coupled with gross carelessness. The accuracy of this statement is abundantly proved by the official reports which are to be found in the British Columbia sessional papers for 1880, pages 298 to 302.

The consequence was an entire failure to reclaim the land, which has since been overflowed the same as before any attempt at dyking was made. One fatal deviation from the specifications condemned the attempted dyke beyond remedy, and that was a change in the location of the levee, which levee was placed from 50 to 100 feet nearer the river than the plans and specifications called for, demonstrating, from the inroads

which the river is continually making upon its banks, the facts that the dyke cannot last, that it is only a question of time for the whole concern to be washed into the river. (*Vide* the reports quoted above).

However, the government made the promoter the land grant which the principal Act provided, in the event of his fulfilling the terms of the Act. That the government were deceived in their grant, the reports of the engineers show and the solicitation for the amendment admits. It is acknowledged that Mr. Sword has expended some capital in the dyking scheme, but it is not just that the settlers should be called upon to recoup Mr. Sword for his useless outlay, which has been of no benefit to the settlers, but which might have been otherwise had the dyke been located in the right place and the specifications followed.

I have the honour to enclose printed statement of facts prepared by the settlers in February, 1882, also copy of one of the numerous protests against the way in which the dyke affair was being carried on.

In the commencement of 1882, Mr. Sword mortgaged to Messrs. M. W. T. Drake and R. E. Jackson the lands granted by the Government under the Act, and all interest which he had or claimed under the "Sumass Dyking Act, 1878," and about the time, Messrs. Drake and Jackson, as such mortgagees, commenced suit in the Supreme Court of British Columbia against several of the settlers, to recover an instalment of the assessments claimed to be payable under the Act, with interest. The actions were based upon the alleged acceptance of the work by the government and their grant of the land, and were defended on the ground that the action of the government (even if they had accepted the work, which was denied) afforded no right of suit, and that the promoter of the "Sumass Dyking Act, 1878," had failed to carry out the terms of the Act. Upon the settlers pressing the actions to hearing, Messrs. Drake and Jackson discontinued the same, paid the costs, and brought in and carried through their private bill—the amendment now complained of.

Section 1 of the amendment limits the responsibility of the promoters to protecting the lands from overflow for any two consecutive years, whereas the original bargain was for absolute protection—the high water of 1876 was to be the criterion; now there is to be no criterion at all. Apart from the objection that this is an alteration of a contract against the will of one of the parties to it, this new provision is palpably unjust in view of the fact that the high water in different seasons varies,—during some exceptional years there is practically no high water at all—and this state of things may last for two or more consecutive seasons.

It is thus quite obvious that a very imperfect dyke—in fact none at all—might, during exceptional seasons—which time is bound to bring about—fill all the requirements of the amendment, and so complete the liability of the settlers; imposing more-over upon them, under the combined effect of section 8 of the amendment and section 31 of the principal Act, and sections there incorporated, the more serious future responsibility of maintaining and supporting what might be, and, in view of the entire departure from plans and specifications added to misplacement of the line of levee, must certainly be—an utterly useless work.

But the injustice of the "Sumass Dyking Amendment Act" does not rest even here, for under section 9, in conjunction with Section 12, of the principal Act, the promoter is now allowed to collect four years' interest moneys from the unfortunate settlers, *i.e.* interest from the 1st July, 1878, to 1st July, 1882, at the rate of eight per cent per annum, upon the amounts for which their lands, in the event of successful dyking, would ultimately be liable—and this irrespective of whether the promoter dykes, or tries to dyke, the land or not; my last advices from the settlers inform me that demands have already, since the passage of the amendment, been made upon them by Messrs. Drake and Jackson for immediate payment of this interest money; and finally, section 10 of the amendment allows the promoter to make any deviation from the line of dyke, and to construct the same in such manner as he may think proper.

The proviso for arbitration affords no protection, for the promoter is at liberty to call successive arbitrations from time to time, until time and repeated efforts shall have at length afforded him a favorable award, whatever the condition of his work may be.



Section 11, which says that the expenses of the arbitrators or umpire shall be borne by the promoter, is mischievous. A tribunal mainly constituted and wholly paid by one party to a controversy, is not pre-eminently calculated to accord the other side justice.

The British Columbia legislature, which consists of twenty-five members only, in allowing this bill (*i. e.* the amendment) to pass, which it did by a narrow majority, acted upon very imperfect information, and to show how entirely misunderstood the aim of the amendment was, it is only necessary to refer to its manifest injustice, and to the further fact that Mr. M. W. T. Drake, who chanced to be a member of the House and a member of the Government likewise, the mortgagee of the privileges conferred by the original Dyking Act, and of those sought by the amendment, and who is now demanding the interest moneys from the settlers, was allowed to and did vote for his own measure, and his vote and advocacy it was, which procured the passage of the amendment, notwithstanding the rules and orders, which inhibit any person who has a direct pecuniary interest in any question, from voting.

Upon the ground that the amendment is an alteration without their consent, and against their protest, of the bargain formulated by the "Sumass Dyking Act of 1878;" that it is *ex post facto* and retroactive in its operation; that its provisions are tyrannical and unfair, and that it is a private Act, introduced into and carried through the House of Assembly by the vote of its promoter, the settlers submit that they have made out a just case to warrant His Excellency's disallowance of the "Sumass Dyking Amendment Act, 1883."

I have, &c.,

THEODORE DAVIE.

*Petition of settlers of Matsqui Prairie to His Excellency the Governor General.*

*To His Excellency the Governor General of Canada:*

The humble petition of the undersigned settlers of the Matsqui Prairie, in the province of British Columbia, sheweth:—

1. That your petitioners are settlers and the owners of several portions of a contract of land, situate on the bank of the Fraser River: and such land is subject to periodical overflows of the said river.

2. That in the year 1878, one Ellis Luther Derby made a proposition to your petitioners, the settlers, to dyke their said lands; and consequently an agreement was entered into between the said Ellis Luther Derby and the settlers, under which Mr. Derby agreed to effectually dyke your petitioners' said lands, and so as to successfully resist the highest overflow which had at that time been known, *viz.*, an unusual overflow which had occurred in the summer of 1876; and such dyke was to be successfully completed on the 1st June, 1878; and in consideration thereof, the settlers' lands were to stand with charged payment of \$4.00 and \$2.50 per acre, according to location.

3. The terms of the above agreement were submitted by Mr. C. B. Sword, herein-after mentioned, as agent for the said Ellis Luther Derby, to the settlers, in writing, and were accepted by them.

4. In pursuance of the said agreement, the said E. L. Derby then applied to, and obtained from the legislative assembly of British Columbia, a private Act of Parliament known as the "Sumass Dyking Act, 1878," embodying, *inter alia*, the terms of the said agreement, excepting as to the time limit for completion of the work, which was extended to July, 1880; and your petitioners crave leave to refer to the said Act, with the terms of which, so far as it binds them, your petitioners are and have always been ready to abide.

5. The promoter of the bill did not comply with the terms of the same; but, after the passage of the Act, disposed of his interest therein to the said Mr. O. B. Sword, and certain dykage works of an inferior kind were commenced and carried on, but not

in any way according to plans and specifications, or in compliance with the terms of the Act.

6. The settlers, your petitioners, from time to time protested against the improper manner in which the dyking works were proceeding, and at length, the time contemplated by the Act for the complete construction of the works having expired, and their lands remaining undyked, and continuing to be overflowed as before, withdrew their assent from further continuance of the dykage scheme.

7. Matters continued thus until the year 1883, when the said C. B. Sword, having previously mortgaged all his interest under the "Sumass Dyking Act, 1878," to Messrs. M. W. T. Drake and R. E. Jackson, applied to the legislature to amend the "Sumass Dyking Act, 1878," aforesaid, and the legislature, of which the said Mr. M. W. T. Drake was a member, and who voted for and carried through the amendment, did amend the same, accordingly, in such a manner as relieves the promoter from effectually dyking the land: authorizes him to construct the dyke in such manner as he sees fit, while still collecting the assessment and interest from the settlers; is otherwise a flagrant violation of the original compact, and generally unjust and inequitable in its provision, and your petitioners crave leave to refer to the said amendment which is numbered 22, amongst the statutes of British Columbia for 1883, and for greater particularity as to the unjust provisions of the "Sumass Dyking Amendment Act, 1883," and otherwise in relation thereto, your petitioners humbly crave leave to further refer to a letter written on behalf of your petitioners by their solicitor, Mr. Theodore Davie, to the Honourable the Minister of Justice, and dated the 14th June, 1883.

Your petitioners humbly pray that your Excellency will be pleased to disallow the said "Sumass Dyking Amendment Act, 1883," and your petitioners will ever pray.

EDWARD M. S. HARRIS, and others.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 14th June, 1883.*

On a report dated 18th of May, 1883, from the Minister of Railways and Canals submitting that the bill of the legislative assembly of the province of British Columbia, for the incorporation of a company to be called "The Columbia and Kootenay Railway and Transportation Company," the objects of which are set forth to be the "running and navigating a line of steamers from a point on Kootenay River, where the southern boundary line of British Columbia intersects the said river, and through and throughout the Kootenay Lake and its navigable tributaries, and of constructing and operating a line of railway from the outlet of Kootenay Lake to the Columbia River, and of running a line of steamers on said river from a point where it intersects the southern boundary line of British Columbia to the head of navigation," further the said bill contemplates the grant of a subsidy in land by the provincial government in aid of the scheme.

The minister further submits that under date the 28th of April last, a public meeting was held in the City Hall, Victoria, at which resolutions were adopted, protesting against the passage of the bill incorporating this company, and urging that the assent of his Honour the Lieutenant Governor should be withheld, until the matter has been considered by the government of the Dominion, and that the objections urged in the said resolutions, a copy of which has been transmitted to Ottawa, state that the bill should give the company the control of the trade of the most valuable portions of the province; that it is unfair to the Canadian Pacific Railway Company, that the local government is without definite information as to the value and character of the lands proposed to be given; that a mischievous monopoly would be established; that it would deprive the mining and agricultural classes of rights defined by the laws of the province, that it would convey to three Americans 750,000 acres of the best land in the province, free of taxes, and finally, that a great majority of the people of the province are opposed to the Act.

The minister represents that the chief engineer of railways, in a report dated the 16th instant, has expressed himself as fully concurring in the views put forward in the said resolutions, and has stated it as his opinion that the granting of the powers and privileges and of the trusts of land applied for would be most injudicious.

He draws attention to the fact that the company consists almost wholly of, American capitalists, and observes that notwithstanding the representation made that the proposed railway will connect by steamer with the Canadian Pacific Railway, and thus bring traffic to that road and to the Canadian seaboard, provision is made for communication with the southern boundary, and that the road under consideration would, in all probability, eventually, become a feeder to the Northern Pacific Railway. That meanwhile the scheme, if carried out, would inflict injustice on our own people, by placing the furnishing of supplies to the Canadian Pacific Railway, while under construction, almost wholly in the hands of American traders and farmers, who would thus obtain a control of the trade of the south-eastern portion of the province, which it would be hard to recover from them.

The chief engineer, therefore, considers that the carrying out of the scheme would entail consequences prejudicial to the interests of the people of British Columbia, the extent of which it is at present impossible to estimate.

The minister desires to express his entire concurrence in the view of this matter taken by the chief engineer as above stated, and to submit the question for consideration.

The committee recommend that advantage be taken of the intended visit of Sir Alexander Campbell to British Columbia, to authorize him to make full enquiry into this subject, to confer with the government of the province, and to report thereon with all convenient speed.

JOHN McGEE,  
*Clerk of the Privy Council.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th October 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th September, 1883.

*To His Excellency the Governor General in Council :*

The undersigned has the honour respectfully to report that he has had under consideration an Act passed by the legislature of the province of British Columbia, at its last session, 46th Vic. (1883) chap. 25, intituled : "An Act to incorporate the Columbia and Kootenay Railway and Transportation Company."

The objects which the company have in view, and the powers given to them, which are material to the consideration of this Act, are defined in the 9th, 10th and 12th sections of the Act. These sections are as follows :—

Section 9. "The company shall acquire, build, equip and maintain a line of steamers and other vessels for the purpose of carrying freight and passengers to and fro from that point on Kootenay River where the southern boundary line of British Columbia intersects the said river, thence down the said river to Kootenay Lake and through and throughout the said lake and its navigable tributaries.

10. "The company shall lay out, construct, acquire build, equip, maintain and work a continuous line of railway from the outlet of Kootenay Lake through the Selkirk Range of mountains to a point on the Columbia River as near as practicable to the junction of the Kootenay with the Columbia River in British Columbia, and such railway shall be built either upon the broad or narrow gauge, and be known as the Columbia and Kootenay Railway.

12. "The company shall acquire, build, equip, maintain, run and navigate a line of steamers suitable for passengers and freight traffic and other vessels upon the Columbia River to and fro from the point on the Columbia River where the Columbia and



Kootenay Railway from Kootenay Lake terminates, to the point on the west bank of the Columbia River where the Canadian Pacific Railway shall strike the said river, and cross the same near the Eagle Pass ; or, in the event of the Canadian Pacific Railway not crossing the Columbia River to the point where a wagon road or railway from Shuswap Lake to the Columbia River may terminate thereon."

At a public meeting held on the 28th April last in the City Hall, Victoria, resolutions were adopted in which certain objections to the undertaking were stated. These are fully set out in an Order in Council of the 14th June last, by which the undersigned was authorized to make full inquiries into the subject, and during his visit to British Columbia to confer with the government of this province and report on the matter with all convenient speed.

In accordance with the terms of the Order in Council, the undersigned conferred with the British Columbia government, and made full inquiry into the subject.

Careful consideration has been given not only to the statements made in favour of the undertaking by the promoters and those friendly to it, but also to the statements of those opposed to the undertaking, that its completion will tend to divert the trade of British Columbia to the United States.

So far as the construction of the proposed line of railway is concerned, no exception can be taken to the undertaking in itself as to the power of the legislature to give the company authority for its completion.

In regard to the power given to the company to establish a line of steamships, two questions arise for consideration :—

(1) Will the company, by means of the line of steamships, divert trade from Canadian railways and territory, to United States railways and territory ? and

(2) Does the Act authorize the company to establish a line of steamships between the province of British Columbia and a foreign country ?

The British Columbia government have expressed their willingness to ask the legislature to amend the Act, so as to make it clear that the company have not the power to establish a line of ships between the province and the United States. That amendment being made, the undersigned is of opinion that the Act may safely be left to its operation.

The undersigned, therefore, respectfully recommends that the British Columbia government be invited to amend the Act in that direction, by providing that nothing therein contained shall authorize the company to establish a line of steamships between the province of British Columbia and any British or foreign country, and that further action in regard to the Act be, for the present, deferred.

The undersigned further recommends that if this report is approved the substance of it be communicated to the Lieutenant-Governor of British Columbia for the information of his government.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 25th February, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th January, 1884.

*To His Excellency the Governor General in Council :*

The undersigned begs leave respectfully to report upon the Acts passed by the legislature of the province of British Columbia during the first session of 1883.

Chap. 5. "An Act relating to county courts," establishes county courts for the several districts therein named, and defines the jurisdiction of the courts.

This Act was probably suggested by the difficulties which arose in regard to the districting of the superior court judges.

The Act assigning the districts of the judges of the supreme court of the province, having been pronounced within the powers of the legislature of British Columbia, the undersigned, when in British Columbia, last year, arranged, with the government of that province, that Mr. Justice McCreight should be assigned to the district of New Westminster, and Mr. Justice Walkem to the district of Kamloops, and also that an officer, to be at the same time county court judge and stipendiary magistrate for Cariboo and Lillooet, should be appointed by the two governments, the Dominion paying his salary as judge, and the province of British Columbia, his salary as stipendiary magistrate.

For the present it is, therefore, only necessary to make provision for the salary of the judge of the county court of Cariboo.

A question arose as to whether inconvenience in the administration of justice might not be occasioned by the existence of this Act, in view of the fact, that the new county court judges were not appointed, but by reference to sec. 34, it will be seen that it is provided that in all cases where, from any cause, the office of a county court judge in any district shall be vacant or not filled up, it shall be lawful for any judge of the supreme court to perform the duties of a county court judge in such district, and he shall have all the powers of a county court judge for such a purpose; and any judge of the supreme court, when in the electoral district of Cassiar, may hold a county court there."

In view of these facts the undersigned respectfully recommends that this Act be left to its operation.

Chap. 10. "An Act to amend the Sumass Dyking Act, 1878."

Certain settlers at Matsqui interested in the reclamation of lands referred to in this Act, petitioned for its disallowance on the ground that it is an alteration without their consent and against their protest of the bargain formulated by the Sumass Dyking Act, 1878, that it is *ex post facto* and retroactive in its operations, that its provisions are unfair and tyrannical, and that it is a private Act introduced and carried through the house of assembly by the vote of its promoter.

The undersigned, when in British Columbia, had the advantage of learning personally from the promoter of the Act, and from those opposed to it, their representations in support to their respective views.

In addition, Mr. Sword, the promoter of the Act, put his reply in writing.

From the papers and from all that was said, the undersigned is not prepared to state that the petitioners have sustained the grounds taken in their petition, but without expressing an opinion in respect of the merits of the case, the undersigned is of opinion that the Act is within the authority of the legislature of British Columbia, and he respectfully recommends that it be left to its operation.

Chap. 14. "An Act relating to the Island Railway, the Graving Dock and Railway Lands of the Province," has been repealed, and a new Act in accordance with the arrangement made between the undersigned, for the government of Canada and the British Columbia government, substituted in lieu thereof.

Chap. 25. "An Act to incorporate the Columbia and Kootenay Railway and Transportation Company," was reported upon, on the 25th September, 1883.

In that report the undersigned recommended that the British Columbia government be invited to ask the legislature to amend the Act by providing that nothing therein contained should authorize the company to establish a line of steamships between the province of British Columbia and any foreign country, and that further action in regard to the Act be deferred.

This recommendation was approved by Order in Council, 19th October, 1883.

The undersigned has lately received a telegram from Mr. Smythe, stating that a bill, embodying the amendments to this Act suggested in that report, had been passed, without division.

The undersigned, therefore, recommends that this Act be left to its operation.

Chap. 26. "An Act to incorporate the Fraser River Railway Company," was reported upon the 25th day of September, 1883, and was, by Order in Council of the 17th day of October, A. D. 1883, disallowed.

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Chap. 27. "An Act to incorporate the "New Westminster Southern Railway Company," was reported upon on the 25th day of September, A. D. 1883, and was, by Order in Council of the 17th day of October, A. D. 1883, disallowed.

The undersigned respectfully recommends that the remaining Acts of the said session, the chapters of which are as follow, be left to their operation, namely:—Chapters 1 to 4, 6 to 9, 12, 13, 15 to 24, 28 to 37.

A. CAMPBELL,  
*Minister of Justice.*



## BRITISH COLUMBIA, 47TH VICTORIA, 1884.

2ND SESSION—4TH PARLIAMENT.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 8th April, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 7th April, 1884.

*To His Excellency the Governor General in Council :*

The undersigned has had under consideration an Act passed during the last session of the legislature of British Columbia, No. 15, intituled : " An Act to prevent the immigration of Chinese."

The 2nd section makes it unlawful for any Chinese to come into the province of British Columbia, or any part thereof, and imposes a penalty upon those Chinamen who do so, and provides that they may be arrested without warrant.

By the 3rd section it is provided that anyone who brings or assists in bringing into British Columbia, any Chinese, or who in any way assists any Chinese in coming into British Columbia, is liable to a penalty of \$200, and in default of payment, to imprisonment for six months for each Chinaman so brought in or assisted.

By the 4th section it is provided that offenders against the 3rd section may be arrested, without warrant, by any constable, and brought before any justice of the peace, to be dealt with according to law.

The preamble to the Act is as follows :—

" Whereas by the British North America Act, 1867, section 95, it is enacted as follows :—

" In each province the legislature may make laws in relation to agriculture in the province and to immigration into the province, and it is hereby declared that the Parliament of Canada may, from time to time, make laws in relation to agriculture in all or any of the provinces, and to immigration into any or all of the provinces ; and any law of the legislature of a province relative to agriculture or to immigration shall have effect, in and for the province, as long and as far only, as it is not repugnant to any Act of the Parliament of Canada.

" And whereas it is expedient to prevent the immigration of Chinese into British Columbia."

Having reference to the condition of Canada at the time of the union of the provinces, the undersigned is of opinion that the authority given by the 95th section of the British North America Act is an authority to regulate and promote immigration into the province and not an authority to prohibit immigration.

A law which prevents the people of any country from coming into a province, cannot be said to be of a local or private nature.

On the contrary, it is one involving Dominion and possibly imperial interests. But without coming at present to a definite conclusion as to whether the Act in question is one within the legislative authority of parliament or of the legislature, the undersigned is clearly of opinion that it is an Act that ought not to be put into operation, without due consideration, and without correspondence with the imperial authorities.

If the legislature had followed the same course with respect to this Act that it followed with respect to Act number fourteen, intituled : " An Act to regulate the Chinese population of British Columbia," and provided that it should not come into force until one year after its passage, time would have been given for necessary consideration and correspondence, but by the 8th section of the Act under consideration, it came into operation on the 31st March last.

As the Act clearly discriminates against the Chinese, and as it imposes great penalties upon Chinamen coming into British Columbia, and upon those who assist Chinamen to come into British Columbia, and as at least great doubts must be entertained as to the authority of the legislature to pass the Act, the undersigned respectfully recommends that it be disallowed.

A. CAMPBELL,  
*Minister of Justice.*

*Order in Council disallowing the Act above mentioned published in the Canada Gazette of the 12th day of April, 1884, Vol. XVII., No 41, page 1586.*

*The Earl of Derby to His Excellency the Governor General.*

DOWNING STREET, 31st May, 1884.

MY LORD—With reference to your lordship's despatch, No. 69, of the 15th ultimo, inclosing a copy of a report of a Committee of the Privy Council, upon an Act for preventing the immigration of Chinese, recently passed by the legislature of British Columbia, in accordance with which report you had disallowed the Act, I have the honour to inform you that Her Majesty has not been advised to disallow Acts passed in the Australian colonies, restricting by very severe provisions, the immigration or introduction of Chinese.

I shall be happy to transmit for your lordship's information copies of some of these Acts, if they are not already in the Parliamentary Library at Ottawa.

Her Majesty's government have not held that the relations of this country with China require them to interfere with the Australian legislation, on international grounds, and it has been treated as a matter of internal administration, with which a responsible colonial government is competent to deal. When, therefore, the Dominion Ministers advise your lordship with regard to these Acts, you may understand that the question is not held to involve imperial interests and that you should deal with it as a Canadian question only.

I do not understand that your lordship invites me to state whether Chinese immigration into British Columbia is placed by the British North America Act of 1867, under the control of the Dominion, or of the provincial legislature, but I may say that is a point on which I am not prepared to give an opinion.

I have, &c.,

DERBY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th March, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd March, 1885.

*To His Excellency the Governor General in Council :*

The undersigned begs leave to report upon the Acts passed by the legislative assembly of the province of British Columbia, in the session commencing on the 3rd of December, 1883, and ending on the 18th of February, 1884.

Having carefully considered the Acts, chapters 1, 5 to 9, 11 to 35, the undersigned, respectfully recommends that they be left to their operation.

Chapter 3, intituled : "An Act to prevent the Immigration of Chinese," was disallowed by order in council on the 8th of April last. The Right Honourable the Principal Secretary of State for the Colonies, referring to the disallowance of this Act, in a despatch to his Excellency, under date of the 31st of May last, states that Her Majesty

has not been advised to disallow Acts passed in the Australian colonies, restricting, by very severe provisions, the immigration or introduction of Chinese and that Her Majesty's Government have not held that the relations of the United Kingdom with China required them to interfere with the Australian legislation on international grounds, and it has been treated as a matter of internal administration, with which a responsible colonial government is competent to deal.

Chapter 2, intituled : "An Act to prevent Chinese from acquiring Crown lands," makes it unlawful for the commissioner of Crown lands, or any other person, to issue a pre-emption record of any Crown land, or sell any portion thereof to any Chinese, or to grant authority under the "Land Act, 1884," (B.C.), to any Chinese to record or divert any water from the natural channel of any stream, lake or river in the province.

Chapter 4. "An Act to regulate the Chinese population of British Columbia," imposes an annual tax of ten dollars on every Chinese over the age of 14 years and makes other stringent and special provisions for the regulation of the Chinese population of the province.

No question, in the opinion of the undersigned arises under chapter 2, with respect to the relative authority of the parliament of Canada and the legislature of British Columbia. A question may arise as to whether or not the Acts applying only to a portion and not to the whole of the population of the province, are constitutional, but this is a question which, if it arises, can be most conveniently dealt with by the courts. A further question will probably be raised as to whether or not the legislature, in the exercise of its powers to impose a direct tax, can so impose it as to limit or restrict that intercourse among people of different nations, which constitutes one of the elements of commerce, but that question is also one which, in the opinion of the undersigned, can best be considered and dealt with by a judicial tribunal, as happened in the case of an Act of the legislature of British Columbia, passed in 1878, for the better collection of taxes from Chinese, which was held unconstitutional, and the collection of taxes thereunder restrained by the courts, and for these reasons the undersigned recommends that the Acts be left to their operation.

Chapter 10. "An Act to consolidate and amend the laws relating to Gold and other minerals, excepting coal."

This Act does not contain the provisions respecting the appointment and jurisdiction of the gold commissioners, which were contained in 45 Vic., chap. 8, and on account of which that Act was disallowed, and there is, therefore, in the opinion of the undersigned, no objection to leaving the Act to its operation.

If this report is approved the undersigned respectfully recommends that the Lieutenant Governor of British Columbia be informed that it is the intention of his Excellency to leave to their operation the Acts mentioned in the schedule thereto, and also the Acts chaptered 2, 4 and 10 hereinbefore referred to.

All of which is respectfully submitted.

A. CAMPBELL,  
*Minister of Justice.*

*Mr. Stanhope to Officer Administering the Government of Canada.*

DOWNING STREET, 21st August, 1886.

SIR,—With reference to my despatch No. 181 of the 5th instant, relating to an Act passed by the Legislature of British Columbia in 1881, intituled : "An Act to regulate the Chinese population of British Columbia," I have the honour to transmit to you for your information, and for that of your government, a copy of a letter from the Privy Council Office with its inclosures on the subject.

I have, &c.,

EDWARD STANHOPE.



*Privy Council Office to Colonial Office.*

WHITEHALL, 13th August, 1886.

SIR,—I am directed by the Lord President of the Council to inform you in reply to your letter of the 6th inst., relating to the treatment of Chinese subjects in British Columbia, and requesting to know the present position of the appeal of Bull *versus* Wing Chong from the Supreme Court of that colony, that Her Majesty in Council was pleased to admit the appellant, Bull (who represented the Attorney General of the colony), to enter and prosecute his appeal from a decree of Mr. Justice Crease, who held that the Chinese Regulation Act of 1884 was *ultra vires* the legislative assembly of the province.

No steps were taken for the prosecution of this appeal, and on the 22nd July this department was informed that the Attorney General for British Columbia does not intend to proceed with the appeal.

In consequence of this intimation Her Majesty was advised by the Lords of the Judicial Committee to cancel and discharge the order of the 3rd of April, 1886, granting leave to appeal, and Her Majesty was pleased on the 3rd of August to rescind that order accordingly. There is, therefore, no appeal from the decision of Mr. Justice Crease now in existence, and it follows that the Chinese Regulation Act of 1884 is held to be *extra vires* the legislative assembly of the province of British Columbia, and has not the force of law.

I am, &amp;c.,

HENRY REEVE,  
*Registrar Privy Council.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Administrator of the Government in Council, on the 17th September, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th September, 1886.

*To His Excellency the Administrator of the Government in Council :*

Upon the reference of the despatch of the 21st ultimo, from the Right Honourable the Principal Secretary of State for the Colonies to your Excellency, transmitting copy of a letter from the Privy Council, with its inclosures, on the subject of the Act passed by the legislature of British Columbia in 1884, intituled: "An Act to regulate the Chinese population of British Columbia," the undersigned has the honour to recommend that a copy of the despatch and of its inclosures be transmitted to the Lieutenant Governor of British Columbia for his information.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## BRITISH COLUMBIA—48TH VICTORIA, 1885.

3RD SESSION—4TH PARLIAMENT.

*Report of the Hon. the Minister of Justice on Chapter 9, approved by His Excellency the Governor General in Council on the 16th March, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1886.

*To His Excellency the Governor General in Council:*

With reference to the Act of the legislative assembly of British Columbia, 48th Victoria (1885), chapter 9, intituled: "An Act to amend the Sumas Dyking Act, 1878," and a memorandum upon which, prepared by the Minister of the Interior, which has been referred to the undersigned by your Excellency in Council, the undersigned has the honour to report as follows:

The first section of the Act in question provided as follows:—

"1. When, and as soon as the Lieutenant Governor in Council shall have cancelled the agreement for the dyking and reclaiming of the lands in Chilliwack and Sumas, as provided in the Sumas Dyking Act, 1878 and amending Acts, it shall be lawful for the chief commissioner of lands and works, by notice in the *British Columbia Gazette*, to offer, from time to time, for sale, in accordance with the provisions of the 'Land Act, 1884,' 45,000 acres of the lands held at the passage of this Act by the Crown, in townships 16, 19, 20, 22, 23, 25, 26, 27, 29 and 30 of New Westminster district; Provided always, that the moneys derived from the sale of the said lands shall be paid into the treasury, to the credit of an account to be called the "Chilliwack and Sumas Dyking Fund."

The Minister of the Interior in his memorandum points out that all the townships mentioned in this section are in the railway belt on the mainland of the province, and claims that the public lands in them are now vested in the Dominion government, and that the Act under consideration is therefore *ultra vires* of the provincial legislature.

The undersigned observes that the terms of the grant of the railway belt from the provincial to the Dominion government as finally settled, are contained in the British Columbia Act, 47 Victoria, chapter 14, section 2, upon reference to which it will be seen that the grant is of the public lands along the line of the railway, wherever it may be finally located, to a width of twenty miles on each side of the said line, as provided in the Order in Council (section 11) admitting the province of British Columbia into confederation.

The undertaking of the province contained in the 11th section of the Order in Council is as general in its terms, and is qualified, so far as the class of the lands to be comprised in the grant is concerned, only by the proviso that the quantity of land which may be held under pre-emption right or by Crown grant, within the limits of the tract of land in British Columbia to be so conveyed to the Dominion government, shall be made good to the Dominion from contiguous public lands.

It would appear, therefore, that the grant to the Dominion was of all public lands in the railway belt, and that "public lands" here means, in effect, all lands which had not, at the date of the grant, been alienated by Crown grant, or were not then under pre-emption right.

If this definition of "public lands" be accepted, it is clear that there is nothing in the "Sumas Dyking Act" or in its amendments, or in the reservation, by the provincial government of the vacant lands in the townships in question, to take such vacant lands out of that category, and they passed to the Dominion government with the other public lands in the railway belt, by virtue of the Act, 47th Victoria, chapter 14.

The undersigned is therefore disposed to agree with the conclusion arrived at by the Minister of the Interior that the Act of last session, chapter 9, is in conflict with the grant made to the Dominion government by the Act 47th Victoria: and he recommends that the said Act, namely, "An Act to amend the Sumas Dyking Act, 1878," be disallowed.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

DEPARTMENT OF THE INTERIOR, OTTAWA, 18th December, 1885.

*Memorandum.*

The undersigned begs to report that his attention has been called to the passage by the legislature of the province of British Columbia at its last session, of an Act (chapter 9, 1885) intituled: "An Act to amend the Sumas Dyking Act, 1878" which purports to deal with lands lying within the railway belt, and which the undersigned is of the opinion were conveyed to the Dominion by the said province, by the settlement Act.

This Act of the British Columbia legislature above alluded to, authorizes the chief commissioner of lands and works to offer for sale from time to time, in accordance with the Provincial Land Act, 1884, forty-five thousand acres of land in townships 16, 19, 20, 21, 22, 23, 25, 26, 27, 29 and 30, New Westminster district, and directs the purchase money therefor to be paid into the Provincial Treasury, to the credit of an account, to be called the "Chilliwack and Sumas Dyking Fund."

Section 13 of the Sumas Dyking Act, 1878, provides that the dyking contractor, Mr. E. L. Derby, should, subject to the conditions of the Act, be entitled to receive, in respect to the dyking to be effected by him, 45,000 acres of land in the before mentioned townships, including in this acreage the lake known as Sumas Lake; and section 34 provides that in the event of the failure of Derby to carry out the conditions, agreements and stipulations in the said Act contained, it should be lawful for the Lieutenant Governor in Council to cancel the said several agreements, and to give as far as possible, the like rights and privileges to some other person, so that the lands mentioned or any part thereof, might be dyked and reclaimed in manner provided by the Act.

The lands in the township above mentioned were reserved for dyking purposes by the provincial government by notice in the Government Gazette of the 13th day of April, 1878, which reservation has never been revoked.

The whole of these lands lie within the railway belt, which was by chapter 11 of 1880 of British Columbia, section one, conveyed to the Dominion for railway purposes, subject only to the conditions of the eleventh section of the terms of union as to pre-emption Rights.

By clause 3 of the Act of British Columbia of 1880, alluded to in the last preceding paragraph, it is provided that the rights of the public with respect to the common and public highways, are not to be affected by that Act. These are the only rights reserved in the conveyance of the railway lands by this statute, there is no exception or reservation of lands reserved by the provincial government for special or general purposes, and, therefore, the lands reserved for dyking purposes by the above mentioned notice, not being lands held by Crown grant or under pre-emption right within the meaning of the eleventh section of the terms of the union, and not having been excepted in the statutory conveyance to the Dominion, made by chapter 11, 1880, nor by the subsequent conveyance, chapter 14, 1883, known as the "Settlement Act," and Mr. E. L. Derby having failed to carry out the dyking contract (he having in fact, as the undersigned is informed and believes, relinquished the enterprise, and left the province of British Columbia, long since) and the provincial government not having before the passage of the statutory conveyance of 1880 and 1883, exercised the powers reserved under section 34 of the "Dyking Act, 1878," of granting to any other person the like rights and privileges, as were conceded to Derby, it is submitted that it may be justly



contended that that these last mentioned Acts of 1880 and 1883, or one of them, in effect cancelled the Derby agreement, and revoked the powers reserved by said section 34, and that thereby these lands have passed to the Dominion for railway purposes, free from the dyking trusts.

And if such is not the effect of the statutory conveyances above quoted it may still be contended that under these statutory conveyances these lands have passed in fee to the Dominion, as trustees for the purposes of the Dyking Act, and consequently that as trustees of the fee any grant to any contractor of any portion of the 45,000 acres to be selected out of the said reserved lands, under the Dyking Act, must be made by the Dominion government, or in case of any conversion of the trust estate, the Dominion government, as the legal trustees of the corpus, and not the provincial government, would be entitled to hold for the contractor, the fund arising from such conversion, until such time as the contractor should have dyked the lands, in accordance with the Act.

And if the Act in question is not legally objectionable on any of the above grounds, it is submitted that it is still subject to disallowance on the ground that, by its passage, the provincial government have virtually admitted that all the Crown lands within the dyking reserve, have passed to the Dominion, except 45,000 acres. These 45,000 acres must, therefore, be the whole undivided interest in this reserve that E. L. Derby would have been entitled to receive on completion of his contract, and as this undivided interest, is stated in section 13 of the Dyking Act, as including the unascertained area of Sumas Lake, the Act now under consideration should, to be in accord with the Dyking Act, have provided that the unascertained area of Sumas Lake should be included in, and form part of, the 45,000 acres purported to be authorized by this Act to be sold from time to time by the commissioner of lands and works.

And finally the Act in question is *prima facie* inconsistent and invalid, as it sets forth that on the 9th day of March, 1885, the date of its passing, these 45,000 acres were Crown lands on that date, and if those lands were Crown lands on that date, they were Crown lands on the date of the passage of the Settlement Bill, and passed thereunder to the Dominion, no legislation or action of the provincial government affecting these lands having been effected intermediately between those dates.

The undersigned begs to recommend that the papers in this case mentioned in the schedule hereto, be referred to the Honourable the Minister of Justice for report as to whether the Act of the legislature of British Columbia, chapter 9, 1885 intituled "An Act to amend the Sumas Dyking Act, 1878," should not be disallowed.

Respectfully submitted.

THOS. WHITE.

*Minister of the Interior.*

*Order in Council disallowing Chapter 9, published in the Canada Gazette on the 29th day of May, 1887, vol. XIX., No. 48, page 1687.*

*Legislative Assembly of British Columbia to His Excellency the Governor General.*

VICTORIA, B.C., 3rd March, 1885.

*To His Excellency the Governor General in Council:*

We, the legislative assembly of the province of British Columbia, extremely regret the disallowance of the Act for prevention of the immigration of Chinese passed at this last session. The disallowance of the Act according to the correspondence, did not proceed from a view of its being unconstitutional, but because the Act was regarded as inexpedient. We see nothing to change the carefully considered representations and opinions which have heretofore been expressed on the Chinese question, and which from

time to time have been communicated to, and urged upon the Dominion government. Briefly they may be summed up as follows:—1. The Chinese are alien in settlement (*sic*) and habits. 2. They do not become settlers in any sense of that word. They have no intention of permanently settling in this country, but come for the purpose of trading and labouring, in order to return to their native country with the means to pass the remainder of their days in ease. The Chinese population chiefly consists of male adults, and thus without the responsibility of providing for a family, they come in unfair competition with white labour. They are the slaves or coolies of the Chinese race, accustomed to live on the poorest fare and in the meanest manner, and hence their presence tends to the degradation of the white labouring classes. Their presence exerts a baneful influence in restricting the immigration of white labour, and especially in the class of house servants, who will not be brought into contact with this race. They have a system of secret societies, which encourages crime among themselves, and which prevents the administration of justice. The use of opium has extended throughout the province to the demoralization of the native races, and the Chinese encourage the use of this drug amongst others of our own rising population, and we urgently request that some restrictive legislation be passed, to prevent our province from being completely over-run by Chinese.

J. A. MARA,  
*Speaker.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General on the 27th March, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th March, 1885.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon an Act, bill No. 21, chapter 13, passed by the legislature of British Columbia, intituled: "An Act to prevent the immigration of Chinese," which came into force on the 9th instant, and of which an authenticated copy was received by the Secretary of State on the 23rd instant.

This Act contains the same provisions as those contained in an Act of the same legislature passed in the session of 1884, chaptered 3, and intituled: "An Act to prevent the immigration of Chinese," which was disallowed by Order in Council of his Excellency on the 8th day of April last.

On the 3rd instant the Speaker of the British Columbia Assembly telegraphed his Excellency expressing the regret of the legislature at the disallowance of the Chinese immigration Act of last session, enlarging upon the evils attending the immigration of Chinese into the province, and requesting that some restrictive legislation be passed, to prevent the province from being completely overrun by Chinese.

It is true that the Act of the session of 1884 was not disallowed distinctly on the ground of its unconstitutionality, there being other grounds which were thought sufficient, and which rendered it unnecessary to express a definite opinion respecting the powers of the legislature to pass the Act.

With respect to the request for restrictive legislation, that is a question which can be more conveniently answered when his Excellency in Council comes to consider what action is to be taken with respect to the report of the Commission on Chinese Immigration.

The Act under consideration purports to be passed in the exercise of the power conferred upon the legislature by the 95th section of "The British North America Act, 1867," to make laws in relation to agriculture in the province, so far as such laws are not repugnant to any Act of the parliament of Canada upon the same subject.

The Act of 1884 was disallowed for the following reasons:—

1. That the power given by the 95th section of the "British North America Act" was a power to promote rather than prevent immigration.

2. That the Act was not one of a local or private nature, but one involving Dominion and possibly imperial interests.

3. That at least time should be given for the consideration of the Act, and for correspondence with the imperial authorities, which was not possible, as the Act was brought into operation at once.

4. That the authority of the legislature to pass the Act was at least doubtful.

By reference to a despatch from the Right Honourable the Principal Secretary of State for the Colonies to his Excellency under date 31st May last, it will be seen that there is no objection to the Act on account of any imperial interests involved.

By the 1st section of the Act it is provided that it shall be unlawful for any Chinese to come into the province of British Columbia, or any part thereof, and that any Chinese who comes into British Columbia shall forfeit and pay the sum of fifty dollars, to be recovered in a summary way before a justice of the peace, and in default of payment, the defendant shall suffer imprisonment with hard labour, for any period not exceeding six months.

By the 3rd section a penalty of two hundred dollars and in default of payment, imprisonment for any period not exceeding six months, is imposed upon any master of a ship, officer or other person, who brings or assists in bringing any Chinese into British Columbia, or who in any way assists any Chinese in coming into British Columbia.

The Act contains two sections which were not in the Act of 1884 and which are as follows:—

"7. Notwithstanding anything in this Act contained, it shall be lawful for the principal secretary upon proof to his satisfaction that any Chinese, who at any time within one year prior to the passing of this Act, had been a stated resident of the province, but who at the time of such passage was temporarily absent, to issue a certificate to such Chinese exempting him from the provisions of this Act."

"8. It shall be lawful to impose a fee not exceeding five dollars for every certificate to be granted under the provisions of this Act, which fee shall form part of the provincial revenue."

In his report to the Lieutenant Governor, the Attorney General of British Columbia states that these sections were added to make the bill unobjectionable.

While these provisions make the Act more favourable to Chinese who now have a residence in British Columbia, they do not in any way remove the principal objection to the Act.

By "The British North America Act," 1867," (sec. 91, subsec. 2,) it is provided that the exclusive legislative authority of the parliament of Canada extends to the regulation of trade and commerce.

The corresponding section of the constitution of the United States (sec. 8, subsection 3) provides that Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes.

In Story's Commentaries on the Constitution of the United States, vol. 2, sec. 1061, it is stated that "commerce undoubtedly is traffic, but it is something more. It is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches; and is regulated by prescribing rules for carrying on that intercourse."

In section 1064 it is laid down that "it may therefore be safely affirmed that the terms of the constitution have at all times been understood to include a power over navigation, as well as trade, over intercourse, as well as traffic, and that in the practice of other countries and especially in our own, there has been no diversity of judgment or opinion. During our whole colonial history this was acted upon by the British parliament as an uncontested doctrine. That government regulated, not merely our traffic with foreign nations, but our navigation and intercourse, as unquestioned functions of the power to regulate commerce."

In section 1065 it is stated "This power the constitution extends to commerce with foreign nations and among the several states, and with the Indian tribes. In regard to foreign nations it is universally admitted that the words comprehend every species of commercial intercourse. No sort of trade or intercourse can be carried on be-



tween this country, and another to which they do not extend. Commerce as used in the constitution is a unit, every part of which is indicated by the term."

This view is sustained by the decision of the Supreme Court of the United States in the passenger cases—7 Howard's Supreme Court reports, and by other decisions of that court.

The undersigned being of opinion that the Act is an interference with the power of parliament to regulate trade and commerce, and that it is a case in which the ordinary tribunals can afford no adequate remedy for, or protection against, the injuries, which will result from allowing the Act to go into operation, feels himself obliged to recommend its disallowance.

The undersigned therefore recommends that the said Act, intituled: "An Act to prevent the immigration of Chinese," be disallowed.

All of which is respectfully submitted.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice upon chapter 13, approved by His Excellency the Governor General in Council on the 10th March, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1885.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon chapter 13, intituled: "An Act to prevent the Immigration of Chinese."

This Act is substantially the same as chapter 3 of the Acts of the legislature of the province of British Columbia, passed on the 18th February, 1884, and intituled: "An Act to prevent the Immigration of Chinese," which Act was disallowed by order in council, passed on the 8th April, 1884, upon the report of the Minister of Justice, to which the undersigned begs leave to refer.

During the session of 1885 the parliament of Canada dwelt with this subject, and passed an Act restricting and regulating Chinese Immigration into Canada (48-49 Victoria, chapter 7).

The undersigned is therefore of opinion that there are stronger reasons now for the disallowance of the Act of the legislature of British Columbia passed in the year 1885, to prevent the immigration of Chinese than there was for the disallowance of the Act passed for a similar purpose in the session of the year 1884.

The undersigned respectfully recommends that the Act of the legislature of the province of British Columbia under consideration, chapter 13, intituled: "An Act to prevent the immigration of Chinese, be disallowed."

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Order in Council disallowing chapter 13, published in the Canada Gazette on the 29th day of May, 1886, vol. XIX., No. 48, page 1686.*

*Secretary's Department of the Interior to Deputy Minister of Justice.*

DEPARTMENT OF THE INTERIOR, OTTAWA, 17th November, 1885.

SIR,—I am directed by the Minister of the Interior to send you, for your information, the inclosed copy of a letter from the Hon. Joseph Trutch, agent of the government for British Columbia, and a copy of the Act of the legislature of that province to which he refers, 48th Victoria, chapter 16.

I have, &c.,

JOHN R. HALL  
*Secretary.*

*Mr. Trutch to the Hon. the Minister of the Interior.*

VICTORIA, B.C., 5th September, 1885.

SIR,—I have the honour to inclose herewith a copy of an Act passed at the last session of the legislature of this province, chapter 16, intituled: "An Act to amend the Land Act, 1884," and to submit for your consideration that the third and final section of this Act, which enacts that "all sales heretofore made of reserved lands, &c., &c., are declared to be valid," is open to very serious objection, and should not be allowed to continue in force, because, whether this provision of the Act had this intention or not, it may certainly be held under it that the Act confirms and makes valid all sales made by the government of British Columbia previously to the passage of this Act of any lands in British Columbia, which had been reserved for any purpose whatever, including military and naval and Indian reservations, as well as all the sales, made just before the date of the passage of the Act, of lands within the limits of the railway belt, which had been conveyed, or reserved subject to be conveyed, to the Dominion by the British Columbia Act 46 Victoria, chapter 14, passed 12th May, 1883, intituled: "An Act relating to the Island Railway, the Graving Dock and Railway Lands of the province," and by the subsequent Act of British Columbia of the same title, 47 Victoria, chapter 14, passed 19th December of the same year (1883), the sales of which last mentioned lands and the issue of crown grants of the lands so sold, by the government of British Columbia, I called attention to by letter of 18th February last, as having been made in contravention of the two statutes just last above named, and to the prejudice of Dominion right under those statutes.

On these grounds I venture to submit that the Act under reference should be disallowed.

In connection with the wrongful and, as I consider, invalid sale of the lands within the railway belt, to which my letter above named had reference, I beg further to call attention to the Act of British Columbia, 46 Victoria, chapter 25, copy of which is also inclosed, intituled: "An Act to incorporate the Columbia and Kootenay Railway and Transportation Company," which Act remains in force, and to point out that under section 17 of this statute, it was enacted that certain tracts of land therein defined should be set apart and reserved, and that such tracts of land were accordingly placed under reservation by the usual formal notification, signed by the chief commissioner of lands and works, published in the *British Columbia Gazette*, of 22nd March, 1883, which notice of reservation has never been cancelled or revoked, and that the tracts of land so reserved include a tract of land six miles wide on each side of the Columbia River, from the 49th parallel to the head of navigation, and that this reservation consequently embraces the twenty mile belt on each side of the line of the Canadian Pacific Railway, now under construction, for a distance of six miles east and six miles west of the westernmost railway crossing of the Columbia River, at the point where the town of Farwell now exists, and therefore includes the two lots Nos. 6 and 7, 1,175 and 214 acres in extent, respectively, situated the first on the east, and the last on the west side of the river, at the railway crossing, and forming the town site of Farwell. Crown grants of which were made by the government of British Columbia to Mr. Farwell and Mr. G. B. Wright respectively, last March, as stated in my letter of last February above mentioned, despite the fact that this land was then and still is, under reservation by public notice just stated, as well as under conveyance, or under reservation subject to conveyance, to the Dominion under the two statutes above mentioned, viz., 46 Victoria, chapter 14 and 47 Victoria, chapter 14.

I have, &c.,

JOSEPH W. TRUTCH,

*Dominion Government Agent for British Columbia.*

*Report of the Honourable the Minister of Justice upon chapter 16, approved by His Excellency the Governor General in Council on the 16th March, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1886.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report with reference to the Act passed by the legislature of the province of British Columbia in the session held in the year 1885, chapter 16, intituled : "An Act to amend the Land Act, 1884."

sections 1 and 2 of this Act make amendments in the Land Act of 1884, and then it is provided by the 3rd section that "all sales heretofore made of reserved lands, and of town, city or suburban lots in the cities of Victoria or New Westminster and the town of Hastings, are declared to be valid."

In a communication, under date 5th September last from Mr. Trutch, the Dominion government agent for British Columbia, to the Minister of the Interior, by whom it was transferred to the Minister of Justice, attention is called to the 3rd section of this Act.

Mr. Trutch observes that the provision is open to serious objection, and should not, in his opinion, be allowed to continue in force, for the reason that the provision whether so intended or not may be held to confirm and make valid, all sales made by the government of British Columbia, previously to the passage of this Act, of any lands in British Columbia which had been reserved for any purpose whatever, including military, naval and Indian reservations, as well as the sales made just before the date of the passage of the Act, of lands within the limits of the railway belt which had been conveyed to the Dominion by the British Columbia Act, 47th Victoria, chapter 14, passed on the 19th December, 1883, and intituled : "An Act relating to the Island Railway and Graving Dock and the Railway Lands of the Province," to the sales of which last mentioned lands, and the issue of Crown grants of the lands so sold, by the government of British Columbia, he had called attention in his letter of the 18th February, 1884, as having been made in contravention of the statute last mentioned, and to the prejudice of Dominion rights under that statute.

The question of the validity of the grants so made by the government of British Columbia, and to which Mr. Trutch calls attention, is now before the courts, and in the opinion of the undersigned, pending the decision of that question, no Act of the legislature of the province of British Columbia, should left to its operation which will have the effect of confirming the grants so called into question.

It might possibly be urged that the 3rd section of the Act under consideration is intended to confirm sales theretofore made of reserved lands in the cities of Victoria and New Westminster and the town of Hastings, but the undersigned thinks it is open to the larger construction which Mr. Trutch has placed upon it, and that the effect of such a construction might be to confirm the grants which the government of British Columbia has made of lands within the railway belt in that province.

The undersigned therefore recommends that chapter 16, intituled : "An Act to amend the Land Act, 1884," be disallowed.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Order in Council disallowing chapter 16, published in the Canada Gazette on the 29th day of May, 1886, Vol. XIX., No. 48, page 1687.*



*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 16th March, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1886.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Acts of the legislature of the province of British Columbia, passed in the session held in the year 1885, chapters 1 to 8, 10 to 12, 14, 15, 17 to 24, 29 to 31, and being of opinion that there is no objection to such a course, respectfully recommends that they be left to their operation.

By the 51st section of chapter 25, intituled: "An Act to consolidate the Public School Acts," it is provided that any person wilfully making a false declaration of his right to vote shall be guilty of misdemeanour, and, on a summary conviction thereof before any justice of the peace, shall be sentenced therefor to imprisonment for any period not exceeding three months, or to a fine not greater than one hundred dollars. The same provision was contained in "The Public School Act, 1879," and attention was called to it in the report of the Minister of Justice of 8th May, 1880.

By the 1st section of chapter 26, intituled: "An Act to authorize the appointment of a commission of inquiry concerning the genuineness of an alleged transfer, dated 23rd June, 1884, from certain Indians to one J. M. M. Spinks," it is provided that any witness who, on the investigation therein mentioned, shall make any false statement on oath or solemn affirmation, shall incur a penalty of \$500.

Both of these provisions in the opinion of the undersigned, are open to objection. The first by purporting to create a misdemeanour, and the second by providing a penalty for an offence, which, by the Act of the Parliament of Canada, 32 and 33 Victoria, chapter 23, section 2, is declared to be wilful and corrupt perjury, and to be punishable accordingly.

The undersigned, however, recommends that the Acts to be left to their operation, but that the attention of the Lieutenant Governor of the province of British Columbia be called to the matter, with a view to the necessary amendments being made.

By the 1st section of chapter 28, intituled: "An Act for the abolition of certain tolls," "An Act to amend the Cariboo Wagon Road Tolls Act, 1876" (47 Victoria chapter 33) and "An Act to amend the Cariboo Wagon Road Tolls Act, 1876" (43 Victoria, chapter 28) and "The Cariboo Wagon Road Tolls Act, 1876," are hereby repealed.

By the 2nd section it is provided that,

"From and after the passing of this Act, there shall be levied and paid unto and to the use of Her Majesty, her heirs and successors, from all persons whomsoever, by way of toll, the sums following, that is to say:—

"For every pound avoirdupois of goods, merchandise, stores, productions and chattels, other than those hereinafter excepted which shall respectively be carried from Clinton in the direction of Cariboo, the sum of half a cent."

By the 3rd section it is provided, "that such tolls shall not be demanded of, or from, or paid by, any person in respect of mining machinery, farming implements, wheat, beans, peas, oats, barley and grain of all kinds, hay, roots, vegetables and other agricultural produce, the growth of the province, and all flour and meal manufactured in this province from wheat, beans, peas, oats, barley, and grain of all kinds grown in the province."

The Minister of Justice in his report of the 11th October, 1876, upon the "Cariboo Wagon Tolls Act, 1876," while not recommending the disallowance of the Act, pointed out that its principle might be so extended, as to render it necessary to consider the question whether such legislation does not trench on the regulation of trade and commerce. The Act last mentioned, with exceptions similar to those contained in the third section of the Act under consideration, established a toll of half a cent for every pound avoirdupois of goods, merchandise, stores, productions and chattels, which should

be carried over or across the Alexandra Suspension Bridge or the Fraser River, within a distance of ten miles from the bridge, or carried from Clinton in the direction of Cariboo.

In 1878 the legislature of British Columbia amended the Cariboo Wagon Road Tolls Act, 1876, and established a toll of one cent per pound on all goods carried from Yale in the direction of Cariboo, with the exception of plant and material for the construction of the Canadian Pacific Railway.

It was objected, however, that this exemption was only partial, that a tax of one cent per pound on all the supplies which would pass over the road to be used in the construction of the Canadian Pacific Railway was enormous and unjust, and that the toll was calculated to cause the tenders for that work, then invited, to be much higher than they would otherwise be. For this reason, as well as that given by the Minister of Justice in 1876, the Act was disallowed.

In 1881, for the same reason, the 43rd Victoria, chapter 28, intituled: "An Act to amend the 'Cariboo Wagon Tolls Act, 1876,'" now repealed by the Act under consideration, was disallowed.

In 1884 another Act was passed to amend the "Cariboo Waggon Road Tolls Act, 1876." The toll, which was fixed at half a cent per pound, was leviable upon goods carried upon the Cariboo Wagon Road from Yale, in the direction of the 50th Mile Post, in the direction of Spence's Bridge or Clinton, and upon goods carried from Clinton in the direction of Cariboo, and it was provided that no tolls should be levied on supplies or materials required for and used in the construction of the Canadian Pacific Railway, by the contractors. This Act was left to its operation.

By the Act of 1885, now under consideration the tolls are abolished, excepting the toll of a half cent per pound leviable, with certain exceptions, on goods carried from Clinton in the direction of Cariboo, and the exemption in favour of supplies and materials for the Canadian Pacific Railway, is omitted.

As the Canadian Pacific Railway is practically finished, the undersigned thinks the consideration of this Act can be limited to the question of its interference with trade and commerce, and that question is one which, in his opinion, can be tried out in the courts, by any person who is affected by the provisions of the Act.

Being of opinion that the course adopted with reference to the Act of 1876 referred to, should be followed in respect of this Act, he respectfully recommends that it be left to its operation.

With reference to chapters 9, 13 and 16, not referred to in this report, the undersigned desires to observe that he has made them the subject of separate reports.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## BRITISH COLUMBIA—49TH VICTORIA, 1886.

4TH SESSION—4TH PARLIAMENT.

*Lieutenant Governor to Secretary of State.*

GOVERNMENT HOUSE, VICTORIA, B.C., 8th April, 1886.

SIR,—I have the honour to forward herewith certified copies of the Acts passed during the recent session of the legislative assembly of this province, and assented to by me on the 6th instant, together with the report of the honourable Attorney General thereupon.

I do not see that any of the Acts require comment from me, with the exception that I wish to draw your attention to the clauses introduced into all the private Acts, with reference to the employment of Chinese. Those clauses expressly state that "this Act is passed upon the express understanding that the company shall not, directly or indirectly, employ any Chinese in or about or concerning any work or service authorized by this Act or required by the company to be done or performed," and go on to impose penalties for such employment, &c. Unwise and extraordinary as such provisions may appear, I confess that they appear to me to be within the competency of the provincial legislature. When they appear separately in private Acts, it is evident that they are inserted with the consent of the promoters, and although such clauses might be *ultra vires* if they had a general and universal application, in the present instances they are part and parcel of the contracts made between the legislature, and those to whose benefit the Acts are supposed to enure, and do not seem to be illegal.

An example of their effect has already been given. The Canada Pacific Railway agreed to construct a branch line of railway from Vancouver to New Westminster on certain terms. When the government subsidy of \$37,000 was voted in the House the other day, a clause of the character referred to above was inserted. On learning this, orders immediately came from the manager of the company to stop all work and preparations on the branch line, unless the time for completion were extended, and unless the company were reimbursed for the difference in cost between White and Chinese labour! The way in which members of the legislature are influenced on this Chinese question as it is called, is very remarkable. In addition to habitual agitators, there is only a portion of any class in the community which troubles itself in the matter. That of course is the labouring class—all others, shopkeepers, tradesmen, merchants, mechanics, farmers, &c., take quite a different view of it, but it is evident that to secure the few votes thus to be influenced, the representatives of the people are ready to go all lengths. All classes agree to this extent, that it would be far preferable that whites should do the work now done by Chinese; but the whites are not forthcoming, and the work must be done, or the country must suffer, and consequently all not immediately and personally affected, prefer the absolutely necessary presence of Chinese in the province. The Dominion Restriction Act is quite enough to prevent the further advent of any number of Chinese, but the awkwardness of the question, with reference to those now in the province, is very patent. Time will solve it, but it will be well if we can escape any such outrage as has latterly disgraced the neighbouring states.

I have, &amp;c.,

CLEMENT F. CORNWALL,

*Lieutenant Governor.*



*Mr. Edwin Johnson to the Hon. the Minister of Justice.*

CITY HALL, VICTORIA, B.C., 26th July, 1886.

SIR,—I beg to inform you that application has been made to me to exercise jurisdiction under the "Small Debts Act, 1886," chapter 6 of the British Columbia statutes of this year; and I am threatened with a mandamus if I refuse. As it seems to involve my acting as judge of a district or county court, as well as for other reasons, I venture to hope that you will favour me with some opinion as to my duty in the matter.

The Act in question was introduced by a private member, and was simply not opposed by the government. No step has been taken by the provincial government to put it in operation. No provision has been made for a court room or for any of the usual and necessary officials of a court; and the fees authorized to be taken by the judge are such, that I could not obtain a clerk by paying him the whole of them. Then the work cast upon the judge is of the most onerous character. He has to collect his own miserable little fees, and the instalments of small debts, pay out instantly all moneys received, however small, keep books, issue process in person to suitors in person, and in fact become a clerk of the lowest order. I believe if I should undertake this duty, I should have little or no time for anything else, and should be driven to resign, not only my revising office, but the magistracy.

These are some of the objections, very briefly and imperfectly stated to the Act; and I can only hope that his Excellency the Governor General may be advised to disallow it.

I have, &c.

EDWIN JOHNSON.

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 7th April, 1887.*

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 6th April, 1887.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to submit for consideration his report on the Acts passed by the legislature of the province of British Columbia in the session of 1886, authentic copies of which were received by the Secretary of State on the 21st day of April last.

Chapters 20 (sec. 8), 25 (sec. 23), 32 (sec. 184), 33 (secs. 12, 14, 23 and 28) and 35 (secs. 11, 13, 21 and 25) contain provisions which in the opinion of the undersigned conflict with the criminal law, and the provision of section 197 of chapter 32 should be limited in its application, to fines and penalties under the legislative control of the British Columbia legislature. But, as the Attorney General of that province, having had his attention called to these objections by the undersigned, has replied that a bill has been prepared to meet such objections, the undersigned thinks the several Acts may be left to their operation.

Section 142 of chapter 32, defining the power of the council of the city of Vancouver to make by-laws as usual in such cases, contains provisions open to question, but accepting such provisions as the delegation of limited powers of police to be exercised, subject to the laws of parliament, the undersigned does not deem it necessary to make any suggestion looking to the amendment or repeal of such provisions.

The undersigned respectfully recommends that the Acts passed by the legislature of the province of British Columbia, in the session of 1886, chapters 1 to 35, be left to their operation.

JNO. S. D. THOMPSON,

*Minister of Justice.*

## BRITISH COLUMBIA, 50TH VICTORIA, 1887.

1ST SESSION—5TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th April, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th April, 1888.

*To His Excellency the Governor General in Council :*

The undersigned, having had under consideration the statutes of the province of British Columbia, passed in the year 1887, respectfully recommends that the said statutes, chapters 1 to 6, and 8 to 38, with the exception of chapter 7, intituled : "An Act to establish a Court of Appeal from the summary decisions of Magistrates," be left to their operation.

Chapter 7, the chapter referred to, provides in effect that any person who thinks himself aggrieved by any conviction made under a statute of Canada, may appeal to any judge of the Supreme Court of British Columbia. This legislation is clearly at variance with the provisions of "The British North America Act," section 91, subsection 27, it being legislation affecting procedure in criminal matters. It is for the Dominion parliament alone to say how a conviction made under provisions of a Dominion statute shall be dealt with, whether it shall be a final or an appealable decision.

In addition to this, the statute in question is at variance with the provisions of the Summary Convictions Act, section 76.

As any proceedings under these provisions might be highly prejudicial to the interest of parties accused of offences against the criminal law, it is expedient, in the opinion of the undersigned, that the Act in question should be disallowed.

The undersigned therefore recommends that chapter 7 of the statutes of the province of British Columbia, passed in the year 1887, intituled : "An Act to establish a Court of Appeal from the Summary Decisions of Magistrates," be disallowed.

Respectfully submitted,

J. S. D. THOMPSON,

*Minister of Justice.*

*Order in Council disallowing chapter 7, published in the Canada Gazette on the 21st day of April, 1888, vol. XXI., No. 43, page 2273.*

## BRITISH COLUMBIA—51ST VICTORIA, 1888.

## 2ND SESSION—5TH LEGISLATURE.

*From the Right Reverend Bishop D'Herbomez, to the Honourable the Minister of Justice, re Chapter 41.*

NEW WESTMINSTER, B.C., 12th May, 1888.

DEAR SIR,—It has been represented to us—without any further particulars being afforded—that the Victoria Board of Trade moved by its own opponents have memorialized the Dominion government praying for the disallowance of an Act for the relief of settlers and owners of land upon the “Matsqui prairie,” passed at the session of the British Columbia legislature which has just risen.

We think that it would have been more consistent with the dignity and fairness of spirit which usually characterize the actions of that influential body, if they had called for the evidence and arguments in favour of the measure, instead of allowing themselves to be governed by the *ex-parte* and interested views of those oppose to it.

Whilst entirely in the dark as to the nature and particulars of the appeal for disallowance, we ask that full opportunity may be afforded us ere any executive action is taken, of showing (as we are convinced we can, to the satisfaction of the advisers of his Excellency the Governor General) that the measure of relief just passed is neither unjust nor improper, but was imperatively required for the reparation of a grievous wrong, which was unintentionally inflicted upon the settlers and owners of land at Matsqui, by the passage of the Sumass Dyking Amendment Act, 1883.

The Sumass Dyking Amendment Act of 1883 (a private bill) was protested against by the settlers and owners of land at Matsqui prairie, because its provisions were contrary to the stipulations of the contract entered into under the “Sumass Dyking Act, 1878,” but was passed by the legislature notwithstanding.

For the same and other reasons set out in full in the petition to the Governor General and letter of Mr. T. Davie, to the then Minister of Justice a petition for disallowance was presented to his Excellency the Governor General, but was ineffectual, the Minister of Justice (Sir Alexander Campbell) reporting that, without expressing an opinion in respect of the merits of the case, he was of opinion that the Act was within the authority of the legislature of British Columbia, and should be left to its operation. In the year 1879, an amendment to the original Act of 1878 was passed without the assent of the promoter, Mr. Derby, and was objected to by him, but in reporting upon his protest the Minister of Justice of the day (the Honourable Jas. McDonald) remarked: “It is not necessary to pass any opinion upon the fairness or unfairness of the provisions of the statute, because as I think, it is clearly within the legislative authority of the provincial legislature, and as no Dominion or imperial interests are involved, it should be left to its operation.”

In anticipation of what may be said both for and against the measure of 1888, now under discussion, we would repeat the grounds taken against the Act of 1883 against Mr. Davie in his letter to the Minister of Justice already quoted, and would call attention to the further fact that the Act of 1883 repealed that portion of the original contract, (the Act of 1878) which made provision for the failure of the dyke to protect from overflow, through some cause other than the insufficiency of the dyke, and enacted that in such case only one-half of the assessments should be payable.

We would beg to state that, immediately upon the passage of the amendment of 1883, we were compelled to pay the interest up to the 1st July, 1882, and were called upon, (although no suggestion of repairing the dyke was then made) to appoint an arbitrator under sections 3 to 7 of the Act, the settlers neglecting to make an appoint-



ment, Mr. Dennis R. Harris was, at Mr. Sword's instance appointed to represent the settlers' interest. Since then, during a period of five years, no offer or attempt was made to dyke the land under even the favourable provisions of the Act of 1883, until in 1888, when we had given notice of an Act for our relief, Mr. Sword succeeded in inducing our arbitrator, Mr. Dennis R. Harris, who was himself in conjunction, with Mr. Swords arbitrator, the sole and absolute judge of the sufficiency of the work, and of our liability for payment of assessments, to become managing director of a company, organized to gain the advantage of the assessments to be wrung from us, in consideration of the dyke being completed to the satisfaction of these two arbitrators and to further head off all chance of our escape by getting our Act passed, enrolled two of the members of the local parliament, Mr. Prior and Mr. Duns-muir, to also join the directorship of the company and accept shares therein.

This company is now known as the Matsqui Land Company, and acquires all the interest of Mr. Sword in the undertaking. Under section 10 of the Act of 1883, liberty is given to make any deviation from the existing line of dyke, and to construct the work in such manner as they see fit, subject only to the approval of Mr. Sword's arbitrator and the settlers' arbitrator—one of the directors of their own company—a tribunal, which is identical with the company of whose actions it is to be the judge. It is for a dyke to be so constructed, instead of one guaranteed to withstand the Fraser, as provided by the original bargain, that the settlers, by the combined effect of the Act of 1883 and Mr. Harris's defection, would be called upon to pay for and keep up for all time.

It was therefore eminently just that the legislature should step in and shield the parties concerned, before the company had committed itself to any expenditure, especially as there is no provision in the Act of 1883 for the appointing of a fresh arbitrator in place of Mr. Harris. If (not having completed in 10 years a dyke which was to have been constructed in two) the legislature had swept away the Act of 1878 entirely, without affording any chance of relief to the promoters, it is submitted that Mr. Sword and those claiming through him would have no just cause for complaint; but here they are given what, by their prospectus was all they asked, and that was until the end of the year to complete the dyke under their original bargain; they were offered another year during the passage of the bill through the house, but did not avail themselves of the further time. The parties are restored to the same position as nearly as can be, as they were in 1878—the assessments and interests dating from now, and not from 10 years ago, during which time they have accomplished nothing.

There is much more to be said and written in defence of the Settlers' Relief Act, 1888, but relying upon the opportunity being afforded to fully answer whatever may be alleged by those who petition for its disallowance, we reserve our own defence, and that of the other settlers and owners interested with us for a future occasion.

I have the honour to be, dear sir, your faithful servant,

L. J. D. HERBOMEZ, O.M.I., V.A.

#### STATEMENT OF SETTLERS' CASE.

*In the matter of an application for the disallowance of Chapter 41, "An Act for the relief of settlers and owners of land on Matsqui Prairie," passed by the Legislature of British Columbia in the session of 1888.*

In 1887, the settlers along the Fraser River entered into an agreement with one Derby to dyke their lands, which were subject to overflow annually by the freshets on the river.

In order that all persons, to be benefited by the dyking, should be compelled to contribute to the cost of the work, a private bill was passed by the legislature of British Columbia in 1878, known as the "Sumass Dyking Act, 1878." This Act gave to Derby the right to dyke the lands, and levy an assessment on the lands to be benefited by the work. This assessment was to be paid in two equal instalments in four and nine years from passing of Act, with interest in meantime at 8 per cent per annum.

One-half of the dyking was to be done by 1st January, 1879, and the remainder by 1st July, 1880, if time for completion was not extended by the Commissioner of Lands and Works of the province. One-half of dyke was finished by the specified time, and the remaining one-half was reported finished on 1st September, 1882. Sword, to whom Derby had transferred the performance of the work, then received about 6,000 acres of land from the Crown.

About the end of September, 1882, Sword borrowed \$9,500 on the security of the assessments, as he alleges, but then, or a short time afterwards, he gave as additional security, sufficient of the lands granted to him to amply satisfy the lenders, the Manitoba and North-west Loan Co.

The first instalment of the assessment was at that time due, and payment of it demanded by Sword from the settlers. The latter contended that the work was not finished, and refused to pay. An action was brought for payment, and in January, 1883, while the action was pending, the dyke was in great part swept away by the floods, proving conclusively that it did not protect the lands claimed to be benefited by it from the overflow of the Fraser, as provided in 12th and 13th sections of Act, 1878.

The action was then abandoned by plaintiff, and an amendment to the Act of 1878 passed, known as "The Sumass Dyking Act Amendment Act, 1883."

By this amendment, Sword was permitted to repair the dyke, and the assessments were to be collected, if the lands were protected from overflow for *two years*. The settlers protested, but in vain. They then applied for disallowance of the amendment, but this was refused on the ground that the bill was a private one.

The matter stood in this shape for the last five years. The settlers could not dyke their lands, nor could they dispose of them, and Sword would not finish the work. The lands were flooded every season and the settlers had, at great expense, to remove their effects during high water. Only last year, the Fathers of St. Mary's Mission, who are the largest individual owners, had to pay \$60 to have their cattle removed to a place of safety.

Learning that the settlers were about to apply to the legislature for relief, Sword induced number of capitalists to form a company known as the Matsqui Dyking Co. and this company agreed with Sword to perform the work required by the Act of 1883 by the 1st of November, 1888.

The Act of this session gives to Sword the privilege of completing the work in accordance with the Act of 1878, by the 1st January next, in which case the assessments will have to be paid. The settlers do not object to this, nor did they at any time refuse to perform their part of the agreement made and put into the Act of 1878.

The Board of Trade of British Columbia, of Victoria, have memorialized the government of the Dominion, that the passing of the Act of this session was a breach of public faith and a confiscature of the rights acquired under the Act of 1878, by foreign capitalists who lent money on the faith of the securities created under it. There can be nothing in this argument. The assessments were only to be levied when the work of dyking was done, so as to protect the lands of the settlers from the overflow of the Fraser. It was the duty of the agents of the lending company to learn if the work was properly done. The settlers always contended that the work was not performed so as to protect them, and their contention proved correct, because, as stated above, the dyke gave way in less than five months after it was reported finished.

It will take about \$25,000 to complete the work properly, and the Matsqui Dyking Co. will get from Sword far more than that sum for completing it. He is a shareholder in the company, and has transferred to them the assessments and the lands granted to him by the owner.

The Vancouver Board of Trade have also passed a memorial in favour of disallowance, if it would injure public credit that it should remain on the statute-book in force.

If there is anything to be made by analysing the votes given in favour of, and against the bill, it should be pointed out that every member for the district in which the lands are, including Hon. John Robson, voted for its passage.

J. J. BLAKE,

For St. Mary's Parish.

*Memorial from Council of the British Columbia Board of Trade and others  
respecting Chapter 41.*

The attention of the council of the British Columbia Board of Trade, of British Columbia, having been called to an Act passed at the last session of the provincial legislature, chapter 41, intituled: "An Act for the relief of Settlers and Owners of land upon Matsqui Prairie," and the board, having had the same under consideration, are of opinion that the Act appears to be an unjustifiable interference with the securities created by the "Sumas Dyking Act, 1878," and calculated (especially as these securities have been negotiated with an English company as security for a loan) not only to depreciate any securities which may be created by the provincial legislature, for the purpose of developing the resources of the country, but also to affect the credit of the province.

Be it therefore resolved that the representatives of the province at Ottawa be urged to use their influence to cause the "Act for the relief of the Settlers and Owners of Land upon Matsqui Prairie, 1888," to be disallowed for the reasons herein set forth.

Certified,

W. MONTEITH,  
*Secretary.*

VICTORIA, B.C.,  
4th May, 1888.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 14th June, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1889.

*To His Excellency the Governor General in Council:*

The undersigned having had under consideration the statutes of the province of British Columbia, passed in the year 1888, chapters 1 to 34, 36 to 38, 40, 41, 43, 45 and 47, respectfully recommends that they be left to their operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 10th June, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st June, 1889.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon the following Acts of the legislature of the province of British Columbia, passed in the year 1888, copies of which Acts were received by the Secretary of State on the 13th June, 1888.

Chapter 35. "An Act for granting certain sums of money for the public service of the province of British Columbia."

The undersigned begs to call attention to the provisions in section 1, and schedule B of this Act, which was the Supply Bill for 1888, authorizing the payment to Messrs. Kinipple and Morris and William Bennett, of a certain sum of money, for services in connection with the graving dock at Esquimalt, the same to be chargeable to the Dominion government, under Act 47 Victoria, intituled "An Act relating to the Island Railway, the Graving Dock, and Railway lands of the Province." From the information which



has been submitted to the undersigned, he has reason to believe that this claim does not form a proper charge against the Dominion government, and he thinks it well that the provincial government should be informed, that in leaving this Act to its operation, no recognition is made of the validity of any such claim or charge against the government of Canada.

Chapter 39. "An Act to prevent the spreading of Noxious Weeds."

This Act provides that any person who imports or offers for sale any seed, in which there is seed of certain noxious weeds therein mentioned, or who knowingly conveys the same from one farm to another, either in fanning mills or threshing machines, shall for every such offence, or conviction, be liable to a fine of not less than twenty dollars, nor more than one hundred dollars, to be levied and recovered on summary conviction before any two justices of the peace having jurisdiction in that locality.

The undersigned entertains doubts as to whether this Act is within the power of the legislature which passed it. It seems to the undersigned, that it is more legislation affecting the criminal law, than in respect to any matter mentioned in section 92 of the "British North America Act." A somewhat similar statute was passed by the legislature of Ontario in 1888, 51 Victoria, chapter 32, having reference to the supply of milk to cheese and butter manufacturers, which Act, in the month of February last, was declared *ultra vires* by the Queen's Bench Division of the High Court of Justice in Ontario. An appeal from this judgment will shortly be heard by the Court of Appeal. *See Reg. vs. Wasson, 17 O. R. 58, and 17 App. Repts. (Ont.) 221.* It is likely that within a short time there will be a judicial decision upon the subject from that court. In the view of the undersigned, the Ontario Act and the one under discussion, are subject to the same objections, and are likely to stand or fall together. Under these circumstances, and anticipating an early decision on the subject, the undersigned does not consider that the power of disallowance should be exercised in respect to this Act.

Independently of the question of jurisdiction, the provisions of the Act seem to be somewhat objectionable, inasmuch as it appears to authorize a conviction for importing, or offering for sale, any grains containing noxious seeds, even though the person accused may not have known of the presence of such noxious seeds. This interpretation seems applicable to the first part of the section, as it goes on to provide that any person who knowingly conveys from one farm to another any such noxious seeds, shall be guilty of an offence. This objection is, however, one which is for the consideration of the legislature of British Columbia, if the Act be within the authority of that legislature.

Chapter 41. "An Act for the relief of the settlers and owners of land upon Matsqui Prairie."

Objection has been taken to this Act, by various persons interested in the properties affected by the legislation therein referred to. The undersigned does not, however, deem such objections sufficient to justify your Excellency's intervention in the matter, as the Act is clearly within the power of the legislature, and he recommends that the Act be left to its operation.

Chapter 42. "An Act relating to the Corporation of the City of New Westminster."

This is an elaborate enactment, providing for the government of the city of New Westminster, and for the regulation of its affairs. Section 1 of this Act gives the corporation of the city of New Westminster power, amongst other things, to give or accept "notes, bills of exchange, bonds, obligations or other instruments," and contains the following proviso:—"Provided always, that the said corporation shall not make or give any bond, bill, note, debenture, or other undertaking, for the payment of a less sum than one hundred dollars (\$100), and any bond, bill, or note, debenture, or other undertaking issued in contravention of this section, shall be void. Provided always, that nothing herein contained shall be construed to authorize the said corporation to issue notes or bills of exchange payable to bearer, or to issue notes to circulate as those of a bank."

This provision would appear to be of doubtful validity, in view of the exclusive powers of the parliament of Canada to legislate upon the subject of bills of exchange and promissory notes.

By section 44 of the Act in question, a court of revision, for the purpose of revising and correcting the assessment roll, is created. Section 44 (a) provides that there shall be an appeal from such court of revision to the judge or acting county court judge, having jurisdiction within the city, who has power to fix the amount of assessment, and issue execution for the payment thereof.

Section 102 provides as follows :—

“The judge shall be paid the sum of twenty dollars for every day's actual and necessary attendance at such courts, whilst engaged at the revision of said lists, together with travelling expenses, and such payment, and all other charges (not otherwise hereinafter provided for) necessary to be incurred in connection with the holding and proper conduct of the business of the court, shall be paid, by the treasurer of the city, upon the certificate or voucher of the judge as to the service performed, and in cases other than as to his own fees, as to the nature of the necessity for the service performed.”

The undersigned deems it his duty to make the following observations in respect to this Act :—

In the following year, 1869, the legislature of the province of Ontario, in the Supply Bill of that year, provided that there should be paid for that year, and for every year hereafter, out of the Consolidated Revenue Fund of Ontario, to the president or chief justice of the court of error and appeal, and to each of the judges of the courts of law or equity in that province, the sum of one thousand dollars.

On the 14th of July, 1869, the Right Honourable Sir John Macdonald, who was then Minister of Justice, reported to your Excellency's predecessor upon this Act, and in his report he stated as follows : “That the 6th section of chapter 1, being the Supply Bill for 1869, is also objectionable, as by the 96th and 100th clauses of the Union Act, it is provided that the Governor General shall appoint the judges of the superior courts, and the parliament of Canada, shall fix and provide the salaries, allowances and pensions, it would seem that the judges of those courts cannot properly, and without a breach of its provisions, receive emolument of any kind from any but the power which appoints and pays them the legal salaries attached to their judicial positions. On these three Acts the undersigned, on the 20th February last, made a report to your Excellency which you were pleased to transmit to the Secretary of State for the Colonies, for the purpose of being referred to the law officers of the Crown in England ; and the attorney and Solicitor-General have given their opinion that it was not competent for the legislature of Ontario to pass those Acts or either of them.”

The undersigned recommends that the attention of the Ontario government be called to the two first mentioned Acts, and the 6th clause of the last Act, suggesting that they should be repealed next session, and no action taken meanwhile.”

The opinion of the law officers of the Crown was to the effect that it was not competent for the legislature of Ontario to pass the section in question. The report of the Minister of Justice having been approved, was transmitted to the government of Ontario, and subsequently the legislature of that province passed an Act intitled : “An Act to remunerate certain members of the Court of Error and Appeal,” by the first section of which the sixth section of the Supply Bill of the previous year was repealed, but substantially repeating this provision in that Act. Under these circumstances, the Minister of Justice, in a report dated the 19th January, 1870, recommended that the Supply Bill of the province of Ontario for 1869, should be disallowed, and the same was accordingly disallowed by an Order in Council dated the 20th January, 1870.

Section 102 of the New Westminster Act, 1888, is open to the same objection as the legislation so disallowed, inasmuch as the judge therein referred to, is a county judge, whose salary is payable by the government of Canada under the provision of the “British North America Act.”

Section 142 gives the council the power from time to time to pass by-laws on various subjects, a considerable number of which subjects are matter within the exclusive authority of the parliament of Canada. Authority is given to pass by-laws :

6. "For enforcing the due observance of the Lord's day, commonly called Sunday according to law."

9. "For preventing vice, drunkenness, profane swearing, obscene, blasphemous or grossly insulting language, and other immorality and indecency, on any of the streets or in any public place within the limits of the city."

10. "For suppressing disorderly houses and houses of ill-fame."

13. "For restraining and punishing vagrants, mendicants and persons found drunk or disorderly in any street, highway, or public place within the city limits."

14. "For preventing indecent exposure of the person or other indecent exhibitions."

16. "For preventing cruelty to animals and for preventing the destruction of birds."

23. "For regulating the encumbering, injuring or fouling by animals, vehicles, vessels or other means, of any public wharf, sewer, shore, river or water."

38. "For preventing the violation of cemeteries, graves, tombs, tombstones or vaults where the dead are interred."

70. "For licensing, regulating and governing auctioneers, and other persons selling, or putting up for sale, goods, wares, merchandise, effects, or real estate by public auction."

71. "For licensing, regulating or governing hawkers or petty shopmen, transient traders, and other persons carrying on petty trades, who have not become householders or permanent residents in the city, or who go from place to place or to other men's houses, or otherwise carrying goods, wares or merchandise for sale."

102. "For imposing penalties, for lightweight and for imposing a reasonable fee therefor."

103. "For regulating the weight of bread and preventing the use of deleterious materials in making bread, and for providing for the seizure and forfeiture of bread made contrary to the by-law;" and

106. "For preventing the sale of adulterated milk or other articles of food."

All the matters referred to in the foregoing list, are matters which are more or less within the exclusive authority of the parliament of Canada. It is possible, however, that all that is intended by this legislation is, that the council of the city of New Westminster should be invested with power to make by-laws for the enforcement of whatever laws made by competent authority may be in force from time to time relating to these various matters: and in that view the portion of the Act in question is unobjectionable. The legality of any by-law, framed in pursuance of this authority, will depend upon its terms. In so far as it may be a substantial provision relating to these subjects themselves, in which case it will probably be invalid; but in so far as it may contain provisions, relating to the enforcement of the laws of Canada it may be a proper and useful provision.

The power to make by-laws in respect to the licensing of auctioneers, traders and wholesale traders, is a doubtful one, requiring an authoritative judicial decision for its final determination.

Section 177 authorizes the city council, subject to the approval of the Lieutenant Governor in Council to appoint from time to time, at such salary as the council may fix, not less than six hundred dollars per annum, and pay a police magistrate for the city of New Westminster.

By section 179, the mayor and police magistrate are given jurisdiction to try all offences committed against the by-laws of the city, and by section 180, the police magistrate shall have and exercise all the same lawful powers and authorities, as have hitherto been had and exercised by any stipendiary magistrate of the province of British Columbia, and by section 181 he has all the powers possessed by two or more justices of the peace. This jurisdiction is a much narrower one than is attempted to be given to police magistrates by provincial legislatures.

Section 188 is as follows:—

"All fines and penalties imposed under this Act or for enforcing any law of this province made in relation to any matter coming within any other classes enumerated in section 92 of the British North America Act, 1867, imposed within the said city, and to which the city may be entitled, and all fines and penalties for offences against the by-laws of the city, shall be paid into the city exchequer.



The undersigned has grave doubts as to the authority of a provincial legislature to enact a provision of this character. The question involved, however, is one which is expected soon to be a matter for judicial decision.

Section 207 of this Act is liable to the same objections as were pointed out in reference to section 1 of the same Act.

The undersigned begs to observe in reference to the whole Act, that it is doubtless of great public benefit to the inhabitants of New Westminster, and that its disallowance would possibly be productive of inconvenience and injury. The provision it makes for increasing the salary of a county court judge may be reviewed by the legislature, and as a county court judge for New Westminster has not yet been appointed, your Excellency has power to prevent the operation of that provision, without exercising the power of disallowance.

The undersigned recommends that the provincial authorities of British Columbia be asked to amend the Act, in accordance with the views expressed in this report, and that the Act be, in the meantime, left to its operation.

Chapter 44. "An Act to incorporate the Crow's Nest and Kootenay Lake Railway Company."

Section 23 of this Act is objectionable, as an infringement of the provisions of the "British North America Act," giving exclusive legislative authority to the parliament of Canada in reference to bills of exchange and promissory notes. This objection, however, is not such as would render necessary the disallowance of this Act by your Excellency, and the undersigned recommends that it be left to its operation.

Chapter 46. "An Act to incorporate the Kootenay Railway and Navigation Company."

The object of this Act is to incorporate a company for the purpose of constructing from the outlet of Kootenay Lake to a point on Columbia River, at or near the junction of the Kootenay and Columbia Rivers, and also for the purpose of building, equipping and maintaining a line of steamers on the Kootenay Lake and Columbia River, and it gives power to the company to acquire, build, equip and maintain a line of steamers and other vessels, for the purpose of carrying passengers to and from that point on the Kootenay River, where the southern boundary line intersects the said river, thence down the said river to Kootenay Lake, and through and throughout said river and its navigable tributaries.

It appears to the undersigned that the objects for which the company is incorporated are not "local works and undertakings," within the meaning of section 92 of the British North America Act, but fall within the exceptions "A" and "B" of article 10 of that section. If this be the correct view, the company is one which can be incorporated only by the parliament of Canada.

The constitutionality of the Act, however, is a question more particularly affecting the incorporators themselves, and may be left to the decision of such tribunal as may be called upon to deal with it, and is not of such public importance as would necessitate its disallowance by your Excellency. The undersigned has, therefore, the honour to recommend that it be left to its operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## BRITISH COLUMBIA—52ND VICTORIA, 1889.

## 3RD SESSION—5TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th June, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1890.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to recommend that the Acts mentioned in the schedule hereto annexed, passed by the legislature of the province of British Columbia in the session held during the months of January, February, March and April, 1889—a certified copy of which was received by the Department of the Secretary of State on the 13th day of June, 1889,—be left to their operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## SCHEDULE.

Chaps. 1 to 17, 19 to 28, 30 to 32, 37 to 39 and 41.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th July, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1890.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration his report on the following Acts passed by the legislature of the province of British Columbia in the session of 1889 :

Chap. 18. "An Act to amend the law relating to municipalities, and to repeal 51 Vic., cap. 88, intituled 'An Act respecting Municipalities,' in Volume one of the Consolidated Acts, 1888."

The undersigned, in recommending that this Act should be left to its operation, deems it unnecessary to point out at length the many objections which may be taken to the powers which this Act purports to give to municipal councils, inasmuch as in a report bearing even date with this on Quebec legislation, he has dealt fully with the question regarding the same powers, which by provincial legislation, are assumed to be given to the city of Montreal.

Chap. 29. "An Act to prevent trespass on inclosed grounds."

This Act purports to impose a penalty upon persons trespassing upon inclosed land, and provides machinery for the trial of such offence. In this respect it touches the criminal law, and it may be at variance with the provisions of the Canadian statute respecting malicious injury to property. The question, however, is one which may, without detriment to the public interest, be left to the courts for decision, and the undersigned therefore recommends that the Act be left to its operation.

Chapter 33. "An Act to amend the New Westminster Act, 1888."

In his report upon the British Columbia legislation of 1888, the undersigned pointed out certain doubtful provisions in the New Westminster Act of 1888. Some of the

same objections are applicable to the present Act, and particularly to section 30, which enlarges the city council's power of making by-laws. For the reasons which induced him to recommend that the original Act should be left to its operation, the undersigned also recommends that this Act be also allowed to go into force.

Chapter 34. "An Act to incorporate the Canadian Western Central Railway Company."

Section 30 of this Act authorizes this company to issue bills of exchange and promissory notes, a provision which may be an infringement upon the legislative authority of parliament, but in view of the Act of the last session of parliament, having reference to such instruments, giving power to companies, under certain restrictions, to issue negotiable instruments, the undersigned recommends that this Act be left to its operation.

Chapter 35. "An Act to incorporate the Columbia and Kootenay Railway and Navigation Company."

This Act authorizes the company thereby incorporated, to build and operate a line of railway between two points in British Columbia and is so far within the competency of a provincial legislature. It, however, authorizes the company to operate a steamship line to and fro, from a point where the Kootenay River intersects the international boundary line to the Kootenay Lake, and through and throughout it and its navigable tributaries. This latter undertaking is within the spirit, if not within the exact letter of section 92, subsection 10 of the British North America Act, which prohibits a provincial legislature from legislating in respect to lines of steamships between the province and any British or foreign country. Nor does the undersigned think that section 18 of the Act, which was inserted in it with the obvious intention of removing any doubts as to its legality, withdraws the objection. The undersigned, however, recommends that the Act be left to its operation.

Chapter 36. "An Act to amend the New Westminster Southern Railway Company Act."

Under the original Act, chapter 36 of 1887, the company were authorized (sec. 2) to construct a railway from some point near the international boundary to some point on the south bank of the Fraser River, opposite the city of New Westminster.

Section 1 of this Act purports to change the northern terminus of the railway, and to fix it on the north bank of the Fraser River, and to give power to construct all necessary bridges crossing the line between the terminal points, and it goes on to declare as follows: "but no bridge over a navigable stream shall be constructed, until such construction shall have been approved of by the Governor General in Council."

So far as this amendment purports to authorize and empower a provincial railway company to bridge a navigable stream, it is an interference with the powers of parliament, which alone can legalize any interference with, or obstruction to navigation, whether upon rivers or elsewhere. A provincial legislature may authorize a company to build a railway between two points in a province, on a line crossing which there may be a navigable stream, but the parliament of Canada alone can legalize the erection of a bridge across such stream.

The undersigned is informed that the Fraser River at the point in question, is navigable, and if this information be correct, clause 1 of the Act in question is *ultra vires* of the legislature. The Act, however, contains other provisions, which are doubtless of great importance to the company, and, inasmuch as the officers of your Excellency's government, charged with the protection of navigation, will doubtless look after the public interest should any erection be attempted to be made over the river in question, under the provisions of this Act, and as, therefore, no public interest would be subserved by the disallowance of the whole Act, the undersigned recommends that it be left to its operation.

Chapter 40. "An Act to amend the 'Vancouver Incorporation Act, 1886,' and the 'Vancouver Incorporation amendment Act, 1887.'"

This Act, among other things, extends the powers of the city council of Vancouver to make by-laws.



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The undersigned, in recommending that it be left to its operation, would express his doubts as to the power of a provincial legislature to authorize a municipal council to pass by-laws upon several of the subjects mentioned in the Act.

He has, however, dealt more fully with this subject in a report bearing even date herewith upon Quebec legislation for the year 1889. (*See page 435 ante.*)

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## BRITISH COLUMBIA—53RD VICTORIA, 1890.

4TH SESSION—5TH LEGISLATURE.

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 21st April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st March, 1891.

*To His Excellency the Governor General in Council :*

The undersigned, having considered the Acts passed by the legislature of the province of British Columbia in the session held in the year 1890. Nos. 1, 2, 4, 6 to 11, 13, 15, 17 to 19, 21, 23 to 30, 32, 34 to 40, 43 to 51, 53, 56, 57, 59, to 67, 69 to 77, 79 and 80, which were received by the Honourable the Secretary of State on the 3rd day of July 1890, respectfully recommends that they be left to their operation, and that the Lieutenant Governor of that province be so informed.

The undersigned observes that the Acts contained in the printed volume of statutes for the year 1890, certified by the Honourable the Secretary of State as having been received by him from the government of British Columbia, under the provisions of "The British North America Act," are not chaptered or numbered in consecutive order, there being no Acts in the volume, chaptered or numbered as follows :—14, 22, 31, 33, 41, 42, 52, 54, 55, 58, and 78. The undersigned understands the explanation to be, that the bills corresponding to the numbers left out, did not pass the legislature.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 21st April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st March, 1891.

*To His Excellency the Governor General in Council.*

The undersigned has the honour to report upon the following Acts passed by the legislature of the province of British Columbia at its session in the year 1890, which Acts were received by the Secretary of State on the 3rd day of July 1890, as follows :—

Chapter 3. "An Act for establishing a Juvenile Reformatory."

Section 4 of this Act provides that any boy confined in one of the common jails of the province under sentence of imprisonment for any offence may, by warrant signed by the provincial secretary, be transferred from such common jail, to the reformatory established by the Act.

The undersigned is of opinion that as to any prisoner convicted under any other authority than that of an Act of the provincial legislature, such legislation is *ultra vires* of a provincial legislature. It is for the parliament of Canada alone to decide the character of the punishment to be undergone for a violation of the criminal law, and the legislature cannot authorize its executive officers to interfere with, or alter a sentence, or change the place where it is being undergone, unless the sentence has been imposed under the authority of the provincial legislature only. If it should be necessary to do so the undersigned can cause the question to be raised, if the removal should be attempted of a prisoner to whom the Act under consideration cannot lawfully be applied, but

he is confident that the provincial authorities, on this matter being brought to their attention, will cause the section above cited to be amended, so as to make the limitation of the application clear, and thus avoid confusion or mistake, and he recommends that in the meantime the Act be left to its operation.

Chapter 5. "An Act to amend the New Westminster Act."

This Act has been passed in pursuance of a suggestion contained in the approved report of the undersigned on the New Westminster Act of 1888, dated the 1st day of June, 1889.

Chapter 12. "An Act to amend the Game Protection Act."

Section 7 of this Act provides in effect that "no one shall at any time purchase or have in his possession with intent to export, or cause to be exported or carried out of the limits of the province, any animals or birds mentioned in the Game Protection Act, in their raw state."

The undersigned is inclined to the opinion that the legislation operates directly as a restriction on trade and commerce, and that the Dominion parliament alone, under its general powers of legislation, and under its particular powers in connection with the regulation of trade and commerce, may declare what goods may, or may not be exported from Canada. In pursuance of this authority the Dominion parliament has already legislated in respect to the exportation of game from Canada (*See* chapter 33, R.S.C., sec. 7.)

The Act may, however, be left to its operation, leaving the question as to the constitutionality of this provision to be adjudicated upon, should occasion arise to have it tested, and the undersigned recommends accordingly.

Chapter 16. "An Act to incorporate the Columbia and Kootenay Railway and Navigation Company."

The undersigned begs to call attention to section 12 of this Act, which authorizes the company to maintain a line for the purpose of carrying freight and passengers to and fro from that point on Kootenay River, where the southern boundary line of British Columbia intersects the said river, thence down the said river to Kootenay Lake.

This provision is conclusive evidence that the objects of the company, notwithstanding section 20 of the Act, are not provincial, but international.

The parliament of Canada, however, at its last session (53 Vict., chapter 87) declared the railway to be a work for the general advantage of Canada, and otherwise confirmed the company's charter. The Act may therefore be left to its operation. The undersigned recommends the same accordingly.

Chapter 20. "An Act to incorporate the New Westminster Electric Light and Motor Power Company."

This is an Act incorporating certain persons as a company, for the purposes of erecting in the city of New Westminster, "electric light and other apparatus connected therewith, and their appurtenances and other instruments used in connection with the business of the electric light and motor power."

Section 27 provides, that in the event of "any Chinese being employed by the company, the company shall be liable upon summary conviction to a penalty not exceeding twenty-five dollars nor less than ten dollars for every Chinese employed," and that in the event of "any Chinese being employed by any of the company's contractors or sub-contractor, any such contractor or sub-contractor shall be liable upon summary conviction, to a penalty not exceeding twenty-five dollars, nor less than ten dollars for every Chinese employed." Also, that "any director or officer of the company, who causes or procures any Chinese to be employed, or permits or connives at such employment, shall be liable to the like penalties."

The validity of these provisions seems open to question, on the ground that it is for the parliament of Canada to legislate respecting aliens, and, therefore, to prescribe their rights and disabilities.

The constitutionality of the section referred to, may, however, be left to the courts to decide, should any person be proceeded against under its provisions.

The undersigned, therefore, recommends that the Act be left to its operation.



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Chapter 68. "An Act to regulate the clearing of rivers and streams."

This Act authorizes the Lieutenant Governor in Council to empower any person to clear and remove obstructions from any lake, river, creek or stream, and to make the same fit for rafting and driving logs timber and lumber thereon.

It makes provision for compensation to the owners of private property for all damage to lands taken or injuriously affected.

The Act, as a whole would, seem to be intended to apply to all rivers in British Columbia, irrespective of the ownership of such rivers.

In the view of the undersigned, the interest of Canada in the rivers in question has not been duly protected. It is claimed by Canada that, under "The British North America Act" (3rd schedule), the beds of all rivers ungranted at the time of the passing of the Act, are the property of Canada, and that a local legislature may not in any way interfere with such property. The Act may, however, have operation in regard to such rivers, if any, as have, previously to the union of British Columbia with Canada, been granted to private individuals, and to that extent is *intra vires* of the legislature.

The undersigned, therefore, reserves to the government of Canada the right, at any time hereafter, to deal in any way it may think fit with all the rivers of British Columbia which are the property of the Crown, including all rivers in the Crown lands of the province, as well as all rivers within the railway belt in British Columbia, granted to Canada under the Act of union.

With this reservation the undersigned recommends that the Act be left to its operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## BRITISH COLUMBIA—54TH VICTORIA, 1891.

## 1ST SESSION—6TH LEGISLATURE.

*Copy of resolutions passed at public meeting held at Nelson, B.C., on 28th May, 1891, respecting chapter 58.*

Whereas, it is currently reported that interested parties are exerting their influence with the Dominion government to procure the disallowance of chapter 58 intituled "The Nelson and Fort Sheppard Railway Act, 1891"; and

Whereas, the southern portion of Kootenay district—one of the most promising mineral regions in the entire Dominion—is retarded in its development by lack of a transportation route that can be operated during the winter, as well as during the summer; and

Whereas, for want of all the year transporation facilities, the owners of our mines are compelled not only to pay exhorbitant, if not prohibitive, freight rates on the output of their mines, but are unable to get their output to a market for 6 months in the year; and

Whereas, the Canadian Pacific Railway Company is either unable to discover a practicable route for a railway from the Kootenay Lake country to its main line, or unwilling to build a railway if a route has been found; and

Whereas, the people of the western portion of the province have been allowed to construct railways that give them competitive transportation facilities, as well as connection with the railway systems of the United States, as have also the people of Alberta, Manitoba, Ontario, Quebec and the maritime provinces; and

Whereas, the bill chartering the Nelson and Fort Sheppard Railway Company was passed by the legislative assembly by a vote of 23 yeas to 4 nays, notwithstanding the active opposition of the Canadian Pacific company, who appeared by counsel before the railway committee of the assembly; Therefore, be it

Resolved, that the people of the Southern Kootenay earnestly protest against the disallowance of the "Nelson and Fort Sheppard Railway Act, 1891," by the Dominion government, deeming such action, if it occurs, to be not only an injustice to the people of the district, and an interference with provincial rights, but a monstrously unfair proposition to make an entire section of country a preserve, for the benefit of a single railway corporation; and further,

Resolved, that we assert the right of the people of the district to construct railways in any direction which their interests may require, and that we declare our fixed determination to maintain such right at any and all cost; and further.

Resolved, that the provincial government be requested to make an earnest protest against any such disallowance, and to make the most strenuous efforts to urge upon the Dominion government the great injustice, and the bad financial policy of such action; and further,

Resolved, that a copy of these resolutions be forwarded to the Honourable John Robson, Premier of the province, and a copy also sent to Mr. Mara, our member in the Dominion House of Commons, with the request that he use his influence against the disallowance of the Act and lay these resolutions before Sir John A. Macdonald, Premier of Canada, and Minister of Railways and Canals.

JOHN HOUSTON,  
*Secy. of Meeting.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 21st July, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 21st July, 1891.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon an Act passed at the last session of the legislature of British Columbia intituled : " An Act to incorporate the Nelson and Fort Sheppard Railway Company."

Representations have been made that it would be for the benefit of the company, and in the public interest, that the pleasure of your Excellency in regard to said Act, should be made known at as early a date as possible. There does not appear to be any reason why the Act in question should not be left to its operation, and the undersigned, therefore, recommends the same accordingly.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 11th May, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th May, 1892.

*To his Excellency the Governor General in Council :*

The undersigned having had under consideration the Acts of the legislature of the province of British Columbia, passed in the year 1891, respectfully recommends that the Acts, chapters 2 to 5, 7 to 13, 15 to 28, 30 to 57, 59 to 73, be left to their operation. The remaining Acts have been reserved for a separate report.

JNO S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by his Excellency the Governor in Council on the 11th May, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th May, 1892.

*To His Excellency the Governor General in Council.*

The undersigned has the honour to report on the Acts of the legislature of British Columbia passed in the year 1891, certified copies of which Acts were received by the Secretary of State on the 12th May, 1891.

Chapter I. " An Act for the protection of Cattle." This Act purports to subject railway companies, under the jurisdiction of the parliament of Canada to the obligations and requirements of the Provincial Fence Act, thereby extending the obligations of such companies beyond those imposed upon them by the Railways Act of Canada.

The undersigned has doubt as to whether the legislation imposing new obligations upon these railway companies is within the powers of a provincial legislature, but as none of the companies likely to be affected by it have called it in question, the undersigned does not consider that any public interest would suffer by permitting it to be left to its operation, and he recommends accordingly.



Chapter 6. "An Act to prevent the spread of Contagious Diseases among Horses and other domestic animals."

Section 14 of this Act authorizes the Lieutenant-Governor in Council to prohibit the importation of diseased animals into the province.

The undersigned considers that this provision is an infringement on the exclusive powers of the parliament of Canada to legislate in respect of quarantine, and may also be an infringement upon its exclusive right to legislate in respect to trade and commerce. The object of the whole Act is eminently beneficial, and, in the view of the undersigned it may safely be left to its operation, the Lieutenant-Governor of the province, however, being informed that, in the view of your Excellency's advisers, he cannot legally exercise the special power purported to be conferred upon him by the section referred to. The undersigned respectfully recommends accordingly.

Chapter 14.—"An Act to further amend the 'Jurors' Act.'"

The sections of this Act, 8 to 15 inclusive, deal with the subject of juries in connection with the trial of criminal cases. In the view of the undersigned, those provisions have to do exclusively with procedure in criminal matters, as distinguished from the constitution of courts of criminal jurisdiction, and are therefore beyond the provincial jurisdiction. Your Excellency's government, however, is now promoting legislation in parliament in relation to criminal law, containing substantially the same provisions as those referred to, and, as no conflict of legislation is likely to arise in practice, the undersigned, having in view the other beneficial provisions of the Act in question, respectfully recommends that the Act be left to its operation.

Chapter 29.—"An Act to consolidate and amend the 'Municipal Acts.'"

In recommending that this Act be left to its operation, the undersigned does not assent to the proposition that a provincial legislature has authority to give a municipal council all the powers specified in section 96 of the Act. Any questions, however, as to the sufficiency of by-laws made in pursuance of this authority may be fairly raised in the courts, and the undersigned would, therefore, recommend that the Act be left to its operation.

Chapter 58.—"An Act to incorporate the Nelson and Port Sheppard Railway Company."

The undersigned has dealt with this Act in a separate report dated 21st July, 1891, which report has already been approved by your Excellency.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## BRITISH COLUMBIA—55TH VICTORIA, 1892.

## 2ND SESSION—6TH LEGISLATURE.

*Petition from the Municipal Council of the District of Surrey, B.C., re Chapter 60.*

*To His Excellency the Governor General of Canada in Council :*

The humble petition of the municipal council of the district municipality of Surrey, in the province of British Columbia, sheweth :—

1. That by the British Columbia Municipal Act, 1889, section 98, municipal councils were empowered to construct works for the deepening of streams, &c., and draining of certain localities, and to charge the cost upon the owners of lands intended to be benefited by such works, conditionally upon receipt of a petition to that effect, signed by a majority of such landowners.

2. That on the 29th May, 1889, a petition was presented to the municipal council of Surrey, praying for the draining and dyking of certain lands in the valley of the Serpentine River.

3. That on the 10th August, 1889, a by-law was passed by the said municipal council, for the *dyking* and draining of certain lands mentioned in a schedule attached to said by-law, notwithstanding the facts that :—

(a.) The petition aforesaid did not contain the names of a majority of the owners of lands mentioned in the said schedule :—

(b.) The Municipal Act then in force, did not authorize dyking.

4. That the legislative assembly of British Columbia did on the 26th April, 1890, pass an Act to amend the Municipal Act 1889 and :—

(a) Added the word “dyking” to the word “draining” whenever it occurs in section 98 of the said Act :—

(b.) Made the same amendments retroactive so far as relates to the raising of moneys to defray the costs of works already constructed under a by-law, before the passing of the Act of 1889 (6th April 1889 and therefore not applicable to Surrey.)

(c.) And authorized municipalities, to raise money on debentures to provide funds for payment of cost of such works.

5. That in November, 1890, another by-law was passed by the municipal council of Surrey, amending the beforementioned by-law of 1889, and authorizing the issue of debentures amounting to \$25,000, upon the credit of the whole municipality, but charging the repayment of the same and the payment of interest, upon the same lands as those mentioned and described in the schedule of the said by-law of 1889.

6. That the legislative assembly of British Columbia in the Municipal Act 1891, empowered municipal councils to pass by-laws with the consent of the electors, to redeem and validate debentures and securities of doubtful validity, issued at any time prior to the passing of that Act.

7. That in January, 1892, the Surrey dyking by-law 1890 above mentioned, was quashed in the Supreme Court of British Columbia, on the suit of E. M. Wiltshire, representing the owners of lands mentioned in the schedule of the said by-law, for reasons stated in the judgment delivered by the Hon. Mr. Justice Drake, a copy of which judgment accompanies this petition.

8. That on the 23rd April, 1892, the legislative assembly of British Columbia passed a private Act, entitled, “The Surrey Dyking Act,” which, notwithstanding that the said by-law was quashed by the Supreme Court of British Columbia, validates or claims to validate the debentures “purporting” to be issued under the said by-law ; and charges the principal and interest partly to the lands described in the schedule before mentioned, and partly to the whole municipality. A copy of the said Act accompanies this petition and is marked “B.”

9. That the before mentioned lawless Acts of the municipal council of Surrey, in past years, have been contrary to the wishes of the electors.

10. That on the 14th May, 1892, the reeve of Surrey, by virtue of the British Columbia Municipal Act, 1892, section 21, subsection (b), published a message to the municipal council, pointing out grave doubts of the constitutionality of the said Surrey Dyking Act, and the great injury done to the municipality and to all Her Majesty's faithful subjects by the said retrospective and retroactive legislation passed by the legislative assembly of British Columbia. A copy of which message accompanies this petition.

Your petitioners therefore humbly pray that your Excellency will be pleased to disallow and veto, or suspend awaiting an expression of Her Majesty's pleasure, the said Surrey Dyking Act, 1892, passed by the legislative assembly of British Columbia, for the following reasons, amongst others :—

1. That retroactive legislation of this kind is dangerous, and not to the public interest.

2. That the Act virtually upsets a decision of the Supreme Court, obtained at great cost by a section of the ratepayers of Surrey, and deprives them of the protection which, in other colonies, is afforded by the courts of law.

3. That the security of public and private rights in property is thereby destroyed.

4. That the said Act in the preamble states that the Surrey Dyking By-law was quashed by the Supreme Court "for the omission by the said corporation to cause the same to be advertised, and for other alleged irregularities," which is untrue, the real reasons being given by the Hon. Mr. Justice Drake in the published judgment; and moreover, your petitioners are of the opinion that Her Majesty's judges in the Supreme Court do not base their decisions on "*alleged* irregularities."

5. That the said Act validates or claims to validate debentures "*purporting* to be issued by the corporation of the district of Surrey," the said word "*purporting*" having been added in the bill since the presentation of the petition of the municipal council of Surrey to the legislative assembly, which petition stated *inter alia* :—

"1. That the corporation of the district of Surrey has never issued any debentures."

"4. That your petitioners believe the said forms of debentures were afterwards signed by a person thereby purporting to be reeve of Surrey, who was neither reeve nor a councillor of the same, and therefore that such proceeding was fraudulent, and greatly to the injury of your petitioners."

A copy of the said petition is annexed.

6. That your petitioners, therefore, by the use of the word "*purporting*," are deprived of their remedy at law against fraudulent practices, and the said Act is a condonation of fraud in the past, and an encouragement to lawless conduct in the future.

7. That the schedule of the said Act contains two distinct lists of lands of varying proportions of supposed benefit; but the Act contains no authority to charge the said lands in any differing proportions; and that therefore great litigation would ensue upon putting the Act into force.

And your petitioners will ever pray, &c., &c.

WALTER J. WALKER,  
*Reeve of Surrey.*

#### SCHEDULE.

##### *List of accompanying Papers.*

A. Judgment of Supreme Court of British Columbia, to quash the Surrey Dyking By-law, 1890, delivered in January, 1892.

B. Surrey Dyking Act, 1892, passed the 23rd April, 1892, validating debentures "*purporting*" to be issued under the Surrey Dyking By-Law, 1890, finally quashed in January, 1892.

C. Message of the Reeve of Surrey *re* Surrey Dyking Act dated 14th May, 1892.

D. Petition of the corporation of the district of Surrey against the Surrey Dyking Bill, 5th March, 1892.



*Petition of Corporation of District of Surrey, re Chapter 60.*

*To the Honourable the Speaker and Members of the Legislative Assembly of the Province of British Columbia :*

Whereas attempts are being made to induce your honourable House to validate certain debentures, said to have been issued by the corporation of the district of Surrey :

The petition of the said corporation of the district of Surrey, humbly sheweth :—

1. That the corporation of the district of Surrey has never issued any debentures.  
2. That the Supreme Court of British Columbia has quashed the by-law under which it was proposed to issue debentures, on account of its being *ultra vires* ; not assented to by the ratepayers ; not reconsidered as the law requires, and for other reasons.

3. That on the 23rd day of March, A.D. 1871, Henry T. Thrift, Esq., then reeve of the municipality, applied to the council for permission to sign and issue certain forms of debentures, proposed to be issued as aforesaid, which permission was refused.

4. That your petitioners believe the said forms of debentures were afterwards signed by a person thereby purporting to be reeve of Surrey, who was neither reeve nor a councillor of the same, and, therefore, that such proceeding was fraudulent, and greatly to the injury of your petitioners.

5. That as no debentures were ever issued by your petitioners, it is not true that the Bank of Montreal either purchased them, or made advances upon them as securities ; moreover, municipal debentures cannot, by law, be hypothecated or used as collateral securities.

6. That your petitioners believe the Bank of Montreal advanced money, not on the said so-called debentures, but upon notes of hand, with collateral securities of certain members of Council and others, amongst them being Henry T. Thrift, Esq., who signed a note for \$3,000.00, and executed a mortgage in addition thereto in favour of the said bank.

7. That the moneys obtained from the Bank of Montreal were illegally expended without the consent of the majority of the owners of lands intended to be benefited thereby, and also without the consent being asked of the ratepayers in general.

8. That the said expenditure amounted to about \$25,000, although contracts were let for the execution of the works for about \$9,000, with bonds and sureties to the amount of \$20,000 for their due fulfilment.

9. That no benefit can be shown to have resulted to the municipality of Surrey from the said expenditure, the said works being now useless on account of faulty construction and other reasons ; a suit being now pending in the courts of law against the contractor and his sureties.

10. That your petitioners believe the existing municipal laws are for the protection of ratepayers and their property, and if reckless councillors can obtain loans of money in spite of, and utterly contrary to, those laws, great injury will result to Her Majesty's faithful subjects within the limits of municipalities.

Your petitioners, the said corporation of the district of Surrey, therefore humbly pray that your honourable House will be pleased either to utterly refuse to validate the said so-called debentures, or to direct, (and that you will direct) that a local public inquiry be made into the whole circumstances by a commission specially appointed so to do, and to report to the next session of your honourable House.

And your petitioners, as in duty bound, will ever pray, etc., etc.

At a meeting of the municipal council of the district of Surrey, duly summoned and held at the town hall of Surrey aforesaid, on the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-two, it was ordered :—“ That the corporate seal of the corporation of the district of Surrey be attached to the foregoing petition,” and so done in the presence of the whole council.

EDMUND T. WADE,  
C. M. C.

WALTER J. WALKER,  
Reeve of Surrey.

*Deputy Attorney General to the Honourable the Minister of Justice.*

ATTORNEY GENERAL'S OFFICE, VICTORIA, B.C., 6th January, 1893.

*Re Surrey Dyking Act, 1892 (chapter 60).*

SIR,—Referring again to your communication of the 3rd November ult., I have the honour, by direction, to place before you the following facts, which may be of service to you in the consideration of the course to be adopted in reference to the petition of the municipal council of Surrey, praying for the disallowance of the above Act.

Some of the more prominent facts connected with the matter are as follows :—

The Surrey council in 1889, at the request of persons interested in reclaiming certain lands in the municipality, made provisions by a by-law for reclaiming these lands, and to carry out the purposes of the by-law, borrowed upon the ordinary revenue of the municipality for that year, the sum of \$12,000, which said sum was to have been paid out of the said ordinary revenue. The contract was then let to dyke the lands, but the work was performed by the contractor in so unsatisfactory a manner, that, in order to save the work done from destruction, and obtain the benefit of the money expended, it became necessary to raise a further sum of \$8,000 without delay. This sum of \$8,000, like the former sum of \$12,000, was borrowed by the then council from the Bank of Montreal upon the ordinary revenue of the municipality, and it should have been repaid out of the said ordinary revenue.

So far the transaction is one quite within the powers of the corporation, and the bank seems to have been of the same opinion, and advanced the money borrowed by the corporation in perfect good faith.

Afterwards, in order to complete the works, reduce the rate of interest, and spread the repayment of the money over a term of years, the impeached by-law was passed.

The manager of the bank, relying on the legality of the first advances and assurances of the council, did not insist, as he might have done, on the immediate repayment of the sum of \$20,000 so advanced as aforesaid, but, in order to assist the corporation, accepted the debentures issued under the impeached by-law, in satisfaction of the prior loan, and also advanced, upon the same debentures, the further sum of \$5,000.

Soon after the debentures were issued, some of the residents of the municipality conceived the idea of contesting the by-law, in order that they, having got the benefit to be derived from the borrowing of the money and construction of the dyke, might be relieved from the repayment of the moneys advanced by the bank.

The facts above referred to will be found set out in the petition of Mr. G. D. Brymner to the House at its last session, herewith inclosed.

Upon the application to quash the by-law before Mr. Justice Drake, the discussion was of course limited to the technical validity of the by-law itself, without reference to the facts above set out. The real merits were not discussed before him, or any justice.

A careful perusal of his judgment will, I think, show that the chief grounds upon which the by-law was quashed, was the want of publication.

I am also informed that this is a matter upon which most stress was laid in the argument, and the one that seemed to most influence the mind of the judge, and it is no doubt fatal.

Instead of instituting legal proceeding to recover the moneys, the bank thought fit to apply for a private bill to validate the debentures, by which course the expense of prolonged litigation was avoided, advantageously to all concerned.

A notice was accordingly inserted in the *Gazette* and the local press, of the intention to apply, and in due course a petition, of which I inclose a copy, was presented for a private bill for the purposes aforesaid.

This petition was supported by another also inclosed, which last named petition was signed by a large majority of the largest and most influential land owners in the municipality, whose chief motive, all the facts of the case being known to them, was to save the municipality from the disgrace which would attach to the repudiation of a just obligation, and the consequent deterioration of its credit.

Pending the meeting of the House, a new council was elected, and owing to the informalities in the election and qualification of some of the candidates, who were in favour of meeting the obligations of the former council, a majority hostile to such a course and in favour of repudiation, was secured. Counter petitions, herewith inclosed, were presented by the last named council to the House, and the whole matter was referred to the private bills committee.

The committee, having first caused public notice of the sitting, and the object, to be published in a newspaper circulating in the municipality, sat for several days and heard evidence both in support of and against the petition. Counsel were heard on behalf of the petitioners for the bill, and on behalf of the opponents. The bill, as originally presented to the House and referred to the committee, was carefully amended. On the 23rd March, the committee reported to the House that the preamble was proved, and further referred the bill to the House with the amendments, together with the evidence which had been taken in shorthand by a stenographer, specially engaged for that purpose.

The whole matter was again fully discussed in the House on the second reading of the bill on the 29th March, and the House arrived at the same conclusion as the committee, viz., that the opposition to the bill was in fact an attempt to repudiate an obligation, incurred in perfect good faith by the predecessors in office of the then council, and that such council were endeavouring to take advantage of defects in the by-law authorizing the issuing of the said debentures, and by that means to repudiate an obligation which, if no by-law had been passed, could not have been successfully impeached.

The bill passed the second reading by a large majority, irrespective of any party vote, some three or four members only voting against it.

It may not perhaps be out of place for me to explain that that portion of the whole indebtedness provided for by the by-law thrown upon the lands of the municipality generally, represents the sum expended by the council after default by the contractors, to avoid the total loss of any benefit from the works, which would inevitably have followed the failure to complete them.

The work has been of benefit to some of the roads of the municipality, as well as the dyked lands.

Referring generally to the subject, of which the bill under consideration is an instance, I think you will agree that the matter is one almost entirely of discretion, in the exercise of coercive powers upon the part of the legislature. That this case amply justified such exercise, the above facts I venture to submit clearly show, as the credit of all municipal institutions would be seriously impaired, if such tactics of repudiation were allowed.

The vote in the legislature is, I think, a fair criterion of the merits of the case, as the members had a full opportunity of hearing all the evidence, and of arriving at a fair judgment in the matter.

These considerations will, no doubt, have already presented themselves to you, and doubts as to the propriety of leaving the Act to its operation would probably only arise in your mind, if gross injustice appeared to have been done by the legislature. That this was not the case, I believe you will conclude when you read the allegations of the petition in the light of the facts above set out.

If any point which seems of importance to you has escaped my attention, I will be happy to afford any explanation in regard to it.

I have, etc.,

ARTHUR G. SMITH,  
*Deputy Attorney General.*



*Petition of G. D. Brymner, Manager of the Bank of Montreal, New Westminster.*

*To the Honourable the Speaker and Members of the Legislative Assembly of the Province of British Columbia :*

The petition of the undersigned, George Douglas Brymner, of the city of New Westminster, of the province of British Columbia, manager of the Bank of Montreal, humbly sheweth :—

That the corporation of the district of Surrey, by a by-law known as the "Surrey Dyking and Drainage By-Law, 1889," made provision for the reclaiming of certain lands in the said district, as therein set forth, which by-law is duly published in the *British Columbia Gazette* :

That the council of the said corporation, for the said year 1889, borrowed upon the credit of the ordinary revenues of the municipality for that year, the sum of \$12,000, to be repaid within that year out of the said ordinary revenues :

That the moneys so borrowed, as aforesaid, were expended by the said corporation in or towards the construction of the said works, in the expectation that the moneys authorized and required by the said by-law to be levied upon the lands, to be benefited by the said works would be available to re-imburse the moneys so withdrawn from the said ordinary revenues of the said corporation, and applied in or towards the construction of the said works as aforesaid :

That the contractors with the said corporation for the construction of the said works made default therein, and the nature of the said works was such that, unless the same had at once been prosecuted to completion, not only would no benefit be derived from that portion then constructed, but such portion itself was liable to be swept away, and the benefit of the moneys heretofore expended wholly lost, whereby it became necessary for the said corporation to undertake, and they did accordingly undertake, the completion of the said works, and completed the same :

That by reason of the default of the said contractors, the said corporation found it necessary to expend and did expend the further sum of \$13,000 in completing the said works, over and above the sum of \$12,000, being the estimated cost of the works aforesaid, at the time of the passing of the said by-law :

That the said corporation, for the purpose of providing temporarily for the prosecution of the said works, pending the passing of the by-law hereinafter referred to, applied in the completion of the said works, the further sum of \$8,000, which was also borrowed upon the credit of the ordinary revenues of the municipality, to be repaid out of the same during the then current year :

That the said corporation, being desirous of providing for the obtaining of the moneys so required for the said works, as aforesaid, upon the credit of the said corporation, that the same might be procured at a lower rate of interest than could otherwise be expected, and of spreading the repayment thereof over a period of years, for the benefit of the persons chargeable with the repayment thereof, and of repaying the moneys so borrowed, as aforesaid, and providing also for the additional sum necessary to make up the total sum of \$25,000 so expended, as aforesaid, passed a by-law, called the "Surrey Dyking and Drainage By-Law, 1890," which was published in the said *British Columbia Gazette*, on the 20th day of November, 1890 :

That the said moneys so borrowed by the said council were borrowed from the Bank of Montreal through your petitioner, who advanced the same because of the passage of two several by-laws of the said corporation of the district of Surrey, duly passed and published in the *British Columbia Gazette*, as aforesaid, authorizing the borrowing of the said respective sums on the credit of the said municipality and the repayment thereof, out of the current yearly revenues of the municipality.

That, relying upon representations made by the council of the said corporation, as to the passage of the by-law which your petitioner hereby asks to have confirmed, he did not insist, as he would otherwise have done, on the repayment of the said moneys so borrowed from the said Bank of Montreal, according to the terms of the said two

by-laws authorizing the borrowing thereof, but delayed such action to enable the council to complete the passage of the by-law hereinbefore mentioned, authorizing the issue of debentures providing for the whole of the said indebtedness :

That the said last-mentioned by-law was accordingly passed by the said council and published, and the debentures thereby authorized were issued and delivered by your said petitioner for the Bank of Montreal, upon account, and for the purpose of wiping out the indebtedness then existing, as aforesaid :

That the said by-law was quashed by a judge of the Supreme Court of British Columbia for a defect in the publication thereof, and for other alleged irregularities :

That before the quashing of the said by-law the debentures thereby authorized to be issued had been made and issued and applied as aforesaid.

Your petitioner says that the acts of the said council, in borrowing the said money from the Bank of Montreal, and in expending the same, and in seeking to provide for the said indebtedness by authorizing the issue of the said debentures, were done publicly, and were well known to the ratepayers because of the same having been discussed and sanctioned by the council at public meetings thereof, and by the publication of the said by-laws, as aforesaid, and by the default of the contractors in not performing their contract for the construction of the said works, which was the subject of much and frequent discussion in the council, and among the ratepayers.

Moreover, one of the principal objectors to the relief which your petition asks, being an accountant, was employed by the said council to prepare the schedule to the said by-law, which your petitioner hereby asks to have confirmed.

Your petitioner states that, notwithstanding what is set forth in the last preceding paragraph no objection was made to the loaning by the Bank of Montreal of the said moneys, or any part thereof, nor was any notice given to the Bank of Montreal or to you petitioner objecting to any such loan, nor was any objection made to the said council in relation thereto.

Your petitioner submits that, under the circumstances, it would be most inequitable and unjust that the corporation of the district of Surrey, who received the said moneys and expended the same, and the persons benefited by such expenditure should, notwithstanding, be allowed to repudiate their obligations to repay the same.

Your petitioner, therefore, humbly prays that your honourable House will be pleased to pass an Act to make the debentures, issued as aforesaid, a good and valid security for the moneys advanced thereon, and to provide for the payment of the interest and principal of the said debentures.

And your petitioner, as in duty bound, will ever pray.

GEO. D. BRYMNER,

*Manager, Bank of Montreal, New Westminster.*

*Petition of Ratepayers of Corporation of District of Surrey.*

*To the Honourable the Speaker and Members of the Legislative Assembly of the Province of British Columbia :*

The petition of the undersigned, ratepayers of the corporation of the district of Surrey, humbly sheweth :—

1. That your petitioners, on the 10th day of August, A.D. 1889, passed a by-law to provide for dyking and draining part of the lands situated within the municipality.

2. That your petitioners afterwards, in the month of November, A.D. 1890, passed another by-law, to provide means for obtaining money to carry out the work contemplated by the by-law passed in August, 1889, and some further necessary improvements.

3. That your petitioners, believing that the by-law passed as aforesaid, in November, 1890, was a good and valid by-law, obtained from the Bank of Montreal the sum of \$25,000.00, and issued debentures for the said sum payable in twenty years, and bearing interest at the rate of six per cent per annum.

4. That the said bank, upon the security of the said by-law, and the good standing and credit of the municipality of the district of Surrey, advanced the said sum in good faith and upon reasonable terms.

5. That the said by-law, so passed in November, 1890, as aforesaid, has been declared by the Supreme Court of British Columbia to be invalid, and by an order of the said court, the same has been quashed for want of proper advertising, and other defects.

6. That your petitioners are justly and truly indebted to the said Bank in the sum aforesaid, with the interest thereon, but in consequence of the said by-law having been quashed as aforesaid, your petitioners are unable lawfully to meet their just and legitimate obligations.

7. That your petitioners are desirous of meeting their legitimate obligations, and maintaining the credit and honour of the municipality and the good faith and reputation of the inhabitants thereof.

8. That your petitioners, while admitting their liability to the said bank, submit that the payment of the principal and interest should be borne by the persons and lands intended to be benefited by the expenditure of the said sum so borrowed.

Your petitioners, therefore, humbly pray that your honourable House will be pleased to grant leave to introduce and pass an Act, to make the debentures so issued by your petitioners as aforesaid a good and valid security for the moneys advanced by the said Bank, and the interest thereon, and to enable your petitioners to provide means for paying the interest on the said debentures, and the principal sum when the same shall become due, and for levying a rate upon the persons for whose benefit the dyke was constructed.

BRITISH COLUMBIA MILLS, TIMBER AND TRADING CO., Royal City Branch,

JOHN HENDRY,  
General Manager,  
And 31 others.

[A similar petition, signed by Johann Wulffsohn and 23 others.]

*Petition of Ratepayers and Land Owners upon the Serpentine River, (B.C.)*

*To the Honourable the Speaker and the Members of the Legislative Assembly of the Province of British Columbia :*

The humble petition of the undersigned ratepayers and land-owners upon the Serpentine River, who were proposed to be assessed under the Surrey Dyking By-Law, 1890, sheweth :—

That your petitioners view with alarm a notice in the *British Columbia Gazette*, dated the 13th day of January, 1892, of an application to be made to your honourable House “for a private bill to validate the debentures issued by the corporation of the district of Surrey, to provide for the payment of the interest thereon, and a sinking fund for their redemption,” which notice was first published in the said *Gazette* on the 14th day of January, 1892, and in the *Daily Columbian* and *The Ledger*, two local newspapers, on the 22nd day of January, 1892.

That as your honourable House meets on the 28th day of January, 1892, and the last day for receiving petitions for private bills is Thursday, the 18th day of February, 1892, very little time is given to your petitioners to protect their interests, the latter date being five weeks from the first notice in the *Gazette*, and only four weeks from its first publication in the local papers.

That the wording of the said notice is false, no debentures ever having been issued by the corporation of Surrey.

That certain so-called debentures, now we believe in the custody of the Bank of Montreal, are not debentures of the corporation of the district of Surrey, inasmuch, as :—



- (1.) The by-law under which it was proposed to issue debentures was never submitted to the ratepayers of Surrey for their approval ;
- (2.) The said by-law was quashed by the Supreme Court for that reason, amongst others ;
- (3.) The said so-called debentures were not signed by the reeve of the municipality of Surrey, but by Mr. James Punch, after he had ceased to be reeve of Surrey (Mr. Henry T. Thrift, or other person, being then reeve of Surrey) and after the council of the said municipality had refused to authorize their issue.

That the said municipal council of Surrey, on the 18th day of January, 1892, by resolution, repudiated the said so-called debentures, or any claim under them, and respectfully requested your honourable House not to entertain the said bill, or any legislation of a like nature.

That whereas, under the "Municipalities Act," municipal councils are empowered to tax lands for local improvements, subject to the consent of a majority of the land-owners, it would be a hardship for your honourable House to pass a private Act which would raise municipal taxes contrary to the legislative decision of the municipal council, and also would virtually mortgage lands without the consent of their owners.

That your petitioners have reaped no benefit by the dyking of the Serpentine River, the works being partially destroyed on account of bad construction or other reasons.

That your petitioners believe the said private bill is for the relief of the Bank of Montreal, and to condone the negligence of its officers ; your said petitioners being guided hereby by the judgment of the Supreme Court, which states, in reply to the pleadings of the bank's counsel :—

"A person lending money on debentures is in no better position than a mortgagee lending money on a worthless security. He is bound to see that the debentures are properly issued, and that the proceedings are all regular and in order. If he does not, he takes the risk. He cannot say that because the corporation did not know their duty, he is free from blame, and ought to be protected ; he has no one to blame but himself."

Your petitioners, therefore, beg your honourable House to reject the said bill, and any proposed legislation of a like nature, and they will ever pray, as in duty bound, etc., etc.

WALTER J. WALKER, and 36 others.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 14th July, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd July, 1892.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to state that reports have been made to him that it would be in the public interests, if the view of your Excellency in respect to an Act passed at the last session (1892) of the British Columbia Legislature, No. 74, intituled : "An Act to authorize the granting of a certain land subsidy for and in aid of the Nelson and Fort Sheppard Railway were immediately declared.

The undersigned has carefully examined the Act in question and has found nothing therein calling for the exercise of any powers vested in your Excellency in respect thereto, and he recommends that the same be left to its operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th June, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th May, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of British Columbia in the fifty-fifth year of Her Majesty's reign (1892), chapters 1 to 19, 21 to 32, 34 to 47, 49 to 59, 60, 61 to 67, received by the Secretary of State on the 30th day of June, 1892, and he is of opinion that they are unobjectionable and may be left to their operation.

Respectfully submitted.

J. ALDRIC OUIMET,  
*Acting Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th June, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts of the Legislature of the province of British Columbia passed in the fifty-fifth year of Her Majesty's reign (1892), certified copies of which Acts were received by the Secretary of State on the thirtieth day of June, 1892.

Chap. 20.—“An Act to amend and consolidate the Acts for the protection of certain Animals, Birds and Fishes.”

Section 8 of this Act provides that no person shall purchase or have in his possession with intent to export, or cause to be exported out of the limits of the province, any portion of the animals or birds mentioned in the Act, in their raw state.

The undersigned has doubts as to whether a provincial legislature has power to prohibit the export of any articles which may be produced in the province, but as that question may, without inconvenience, be raised in a court having authority to deal with it, and as the provisions of the Act, as a whole, are for the public benefit, the undersigned recommends that the Act be left to its operation.

Chap. 33.—“The Municipal Act of 1892.”

In recommending that this Act be left to its operation, the undersigned must not be understood as indicating that all the powers and authority which by it are conferred upon municipal institutions in respect to their power of passing by-laws, is within the legislative competency of the provincial legislature.

Chap. 48.—“An Act to incorporate the Canadian Northern Railway.”

The preamble of this Act recites that a petition had been presented for the incorporation of a company, for the purpose of constructing and operating a railway, from a point on the eastern boundary of the province to the northern terminus of the Esquimalt and Nanaimo Railway; and section 16 of the Act authorizes the construction of a railway from some convenient point near the eastern boundary of the province, to the northern terminus of such railway.

It would appear to the undersigned that a provincial legislature has not power to incorporate a company of this character, inasmuch as it is, in effect, a line of railway between two provinces. The question is one which, should it arise, may conveniently be left for judicial decision, and the undersigned respectfully recommends that the Act be left to its operation.

Chap. 60.—“An Act relating to certain Public Works in the District of Surrey.”

This is an Act confirming a certain by-law, passed by the corporation of the district of Surrey, authorizing the borrowing of certain money for the purpose of dyking the marsh lands in the district.

The municipal council of the district of Surrey has petitioned your Excellency to disallow the Act, upon the grounds principally that public and private rights are thereby destroyed, and that the legislation is retroactive in its nature, extremely dangerous and against public interest.

The Act is one which is undoubtedly within the competency of the provincial legislature to pass, and it does not contain any provisions which, upon its face, are inconsistent with the recognized principles of good legislation, nor is the undersigned convinced from a perusal of the petition, and of all of the papers connected therewith, that there has been any improper or unjust interference on the part of the legislature with the rights of private individuals, and that the Act in question was not on the whole a proper one to pass. The undersigned, therefore, recommends that it be left to its operation.

Respectfully submitted.

J. ALDRIC OUIMET,  
*Acting Minister of Justice.*



## BRITISH COLUMBIA—56TH VICTORIA, 1893.

## 3RD SESSION—6TH LEGISLATURE.

*Petition from inhabitants of Province of British Columbia, praying for the disallowance of Chapter 55.*

*To the Right Honourable Sir Frederick Arthur Stanley, G.C.B., Earl of Derby, Baron Stanley of Preston, Governor General of Canada, etc., etc., etc., and to His Excellency the Governor General in Council.*

MAY IT PLEASE YOUR EXCELLENCY :

The petition of the undersigned people of British Columbia humbly sheweth :

That all rural districts, without regard to their political leanings, are crying out for larger appropriations for work of development ;

That the estimates submitted to the legislature at its last session show revenue and expenditure as follows:—

Receipts (in round numbers) from :

Dominion subsidies.....	\$242,000
Land sales.....	175,000
Timber and mining revenue.....	97,000
Miscellaneous, including interest and reimbursements....	122,000
Taxes, and charges in nature of taxes.....	424,000

Total provincial revenue..... \$1,060,000

And Expenditures (in round numbers) for:

Charges of government and maintenance, other than works of development.....	\$1,011,000
Surveys.....	50,000
Roads, streets, bridges and wharfs.....	215,000

Total estimated expenditure..... \$1,276,000

Thus showing a deficit of \$216,000 to be made up from borrowed money, in order to carry on the ordinary work of the country.

And the petition of the undersigned further sheweth :

That with full knowledge of the facts above set forth, and while protesting its inability to meet the demands of all sections of the province for larger expenditures on works of development, the government has, by an Act entitled "An Act to provide for the erection of new buildings for the accommodation of the Provincial Legislature and the Public Departments," taken power to borrow the sum of six hundred thousand dollars to meet the first estimate of the cost of said buildings :

That the present public buildings could, with small additions, be made to serve the purposes of the province for many years to come.

That the proposed expenditure cannot be justified upon any ground of necessity or expediency, and that it will involve an addition to the debt of the province which will seriously curtail its ability to provide for necessary works of development.

That the government has, further, promised consideration to a demand made upon the province for financial aid, by the promoters of a new trans-continental railway, to be called the British Pacific Railway, and has, by a government Act, extended the time limit of the charter of said railway, pending consideration of said demand, the promoters asserting that said railway cannot be constructed without such aid.

That said demand is for a guarantee of interest, at four per cent per annum, upon bonds of the said railway, to the amount of \$6,000,000.

And the petition of the undersigned further sheweth :

That, owing to the rapid increase in the population of certain parts of British Columbia since the opening of the Canadian Pacific Railway, the legislative assembly of the province has not been, for many years, representative of the people of the province.

That the said assembly is non-representative to an extent entirely subversive of the principle of responsible government, as the subjoined statements from the returns of the last general election will show.

The mainland, with 9,025 registered voters, returned 17 members :

The island, with 6,535 registered voters, returned 16 members ;

The province is divided into 18 constituencies, with a total registered vote of 15,560. Of these voters 12,691 are registered in seven constituencies, which elect 16 members, and the remaining 2,869 voters are registered in eleven constituencies, which elect 17 members ;

At the last general election, the seven constituencies registering 12,691 voters returned only four members as supporters of the government, while eleven small constituencies, having 2,869 voters, returned sixteen government supporters, and one of the four government supporters elected by a large constituency having resigned before the meeting of the House, his place was supplied by an opponent of the government.

At a meeting of the House, therefore, we had (giving each member his proportion of the votes registered in his constituency), nineteen members who were supporters of government, representing 4,576 registered voters ; fourteen members who were not supporters of government, representing 10,984 registered voters. And the petition of the undersigned further sheweth.

That at various times before and since the last general election, and particularly in the speech of his Honour the Lieutenant-Governor at the opening of the House in January last, a measure providing for a just redistribution of representation has been promised, the words of his honour's speech being : "The time has arrived when the altered conditions of the province demand a change in the method of popular representation in the legislative assembly, and a measure of redistribution will, therefore, be submitted to you."

That this often repeated promise has not been fulfilled. And the petition of the undersigned further sheweth.

That the mainland portion of British Columbia, according to the census of 1891 has an area of 366,300 square miles, whereas the island portion embraces 16,002 square miles only ; that said mainland portion has, therefore, the greater need of expenditure upon works of development : that the said mainland portion contributed over two thirds of the total revenue collected within the province, and has, by the census of 1891, a population of 61,406 as against 36,767 on the island ; and that the natural resources, from the development of which the prosperity of the country must come, lie largely on the mainland.

That therefore, the people of the said mainland portion of British Columbia object most strongly to the squandering of the provincial resources in non-productive undertakings, by the vote of a non-representative House, and are now advocating the separation of the mainland from the island, as the surest means of relief from the evils under which they at present suffer.

Your petitioners, therefore, having within their power no constitutional means of redress, pray that your Excellency may be pleased to veto the aforesaid Parliament Buildings Construction Act, so that the same may have no force or effect until, and unless, it be assented to by a majority of the members of a legislature, properly representative of the people of the province.

And your petitioner will ever pray, &c.

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*Copy of a Report of a Committee of the Honourable the Executive Council, approved by His Honour the Lieutenant-Governor on the 2nd day of September, 1893.*

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The Committee of Council have had under consideration a communication from the Deputy Minister of Justice to the hon. the Attorney General, dated 17th July, 1893, inclosing copy of a petition, praying that his Excellency the Governor General might be pleased to veto an Act of the legislature of last session, intituled: "An Act to provide for the erection of new buildings for the accommodation of the Provincial Legislature and the Public Departments," and submitting a series of statements in support of the prayer of such petition:

The report of the hon. the Attorney General, to whom the matter was referred, remarks that whilst under the British North America Act, 1867, in each province the legislature has the exclusive right of legislation, amongst other things, upon the subjects of (a) the amendment of the constitution, except as regards the office of Lieutenant-Governor, (b) the borrowing of money on the sole credit of the province, and (c) local works and undertakings, and the complaint of the petitioners is as to matters coming under one or other of the exclusive subjects of jurisdiction just mentioned, yet that the attention of his Excellency the Governor General in Council should be drawn to the facts hereinafter stated.

As to so much of the petition as alleges that the estimates submitted to the legislature at its last session show an estimated expenditure of \$1,276,000.00 as against an estimated revenue of \$1,060,000.00, "thus showing a deficit of \$216,000.00 to be made up from borrowed money in order to carry on the ordinary work of the country," the minister remarks that the quoted statement is misleading and untruthful, as implying that the sum of \$216,000 is to be made up from money to be borrowed for that purpose—the fact, on the contrary, being that in the year 1891 it was decided by the legislature to raise a loan of \$1,000,000.00 for the purpose of undertaking works of public utility throughout the province; that the money was borrowed accordingly, and had been only partially expended at the time of the voting of the estimates alluded to, when there remained in the treasury the sum of nearly \$500,000.00, and that in pursuance of the purpose for which the said \$1,000,000.00 loan was raised, the estimated expenditure was made to exceed the estimated revenue, the surplus to be taken out of the balance of the loan so remaining in the treasury: that the total estimated expenditure was not \$1,276,000.00, as alleged in the petition, but was \$1,277,157.00, of which sum, so far from the charges of government and maintenance, other than works of development, amounting to \$1,011,000.00, as alleged in the petition, the sum of \$185,855.00 was voted for the purposes of education, exclusive of school buildings, the sum of \$129,500.00 for buildings, schools, &c., the sum of \$50,000.00 for surveys throughout the province, the sum of \$215,500.00 for roads, bridges and wharfs, and \$88,498.00 for miscellaneous expenditure.

That the finances of the province are in a sound and healthy condition, its inscribed stock ranking third amongst colonial securities, the Dominion of Canada being first, the colony of Ceylon second, and the province of British Columbia third: that the province has recently become the highway of a profitable trade, which has sprung up between Canada, and the Australias and the Orient, and that Victoria, the capital of the province, is the first port of call in the province, for vessels engaged in that trade: that the buildings for the use of the public offices and legislature of the province, erected in the very early colonial days when British Columbia was isolated from the rest of the world, have now become unfitted for the purposes of the province, and are moreover in a very dilapidated condition, and that in view of the necessity that exists for new public buildings, the legislature at its last session resolved to expend the sum of \$600,000.00 in the erection of a suitable structure. The inference of the petition, apparently, is that more than \$600,000.00 is to be expended in the work, whereas the intention of the Act is to limit the expenditure within that amount.

As to so much of the petition as asserts that the legislative assembly is and has been for years non-representative of the people of the province, the minister observes



that, with certain additions to the number of members, the basis of representation is the same as that which existed at the time of the confederation, when the white population of the island of Vancouver largely exceeded that of the mainland. The number of members being then 25 for the entire province, was apportioned, notwithstanding the inequality in population, by giving 13 to the mainland and 12 to the island, and the same ratio has been kept up ever since.

The last decennial census showed that the mainland had a total population of 61,406, and the island of 36,767, and acting upon this basis the government concluded to bring down a bill for redistributing the seats in the legislative assembly, but upon analyzing the census returns, and deducting the Chinese and Indians, who are not voters, it appeared that the white population on Vancouver Island was still in excess of that of the mainland of British Columbia.

The correspondence upon the subject of the census returns, and which correspondence took place during the session of the last legislature was, as follows:—

26th February, 1893.

*Hon. J. H. Turner to Deputy Minister Agriculture, Ottawa.*

Please wire total of Indians on Mainland, B.C. Also total Indians on Vancouver Island.

27th February, 1893.

*Deputy Minister Agriculture, to Hon. J. H. Turner :*

Total Indians on Mainland, 29,460. On Vancouver Island, 5,742.

27th February, 1893.

*Hon. J. H. Turner to J. Lowe, Ottawa :*

Does total population of B. C. given in Bulletin 5, include Indians?

28th February, 1893.

*J. Lowe, Ottawa, to J. H. Turner :*

Population in Census Bulletin relative B. C. includes Indians.

February 28th, 1893.

*Hon. J. H. Turner, Ottawa, to J. Lowe :*

Please wire number of Indians in the 5 B. C. district ?

1st March, 1893.

*J. Lowe, to Hon. J. H. Turner :*

Following subdivisions by agencies, Indian population slightly in excess of figures given. West Coast, 2,864 ; Cowichan, 2,048 ; Kerakeweth, 1,905 ; Okanagan, 878 ; Williams Lake, 1,803 ; Fraser River, 4,338 ; Kamloops, 2,401 ; Kootenay, 696 ; North-west Coast, 4,001 ; Babine, 2,645 ; bands not under agency, 11,796.

24th March, 1893.

*Hon. J. H. Turner to J. Lowe, Ottawa :*

Your telegram of 27th February gives total Indians, mainland, 29,460 ; island, 5,742. Bulletin gives total population B. C., 98,173. Deducting Indians, this leaves white population B. C., 62,971. Is this correct? State how many whites on island and how many on mainland. Please wire reply as soon as possible.

25th March, 1893.

*J. Lowe, Ottawa, to Hon. J. H. Turner :*

Whites on island, 31,025 ; on mainland, 31,946.

The accuracy of these figures seeming to be open to grave doubt, the government concluded to postpone the introduction of the redistribution measure until corrected returns could be had, and, after the legislature had risen, the following correspondence ensued between the premier of the province and the Department of Agriculture :—

13th April, 1893.

*The Hon. Theo. Davie, Premier, to J. Lowe, Ottawa :*

In your telegram to Hon. Mr. Turner, dated 25th March, you give whites on island thirty-one thousand and twenty-five, and on mainland thirty-one thousand nine hundred and forty-six. Do these include Chinese ; if so, how many on mainland and island, respectively ? Please consult Mr. Johnson, the statistician, as to the results wired by you to Mr. Turner, and ask him to wire me comprehensively following information based upon the census :—

Total population province, including Chinese and Indians ; apportionment total population between mainland and island ; how many Indians on mainland ; how many on island ; how many Chinese, mainland ; how many Chinese on island ; how many whites on island, exclusive of Indians and Chinese ; how many whites on mainland, exclusive of Indians and Chinese.

18th April, 1893.

*J. Lowe, Ottawa, to Hon. Theo. Davie, Premier :*

Population British Columbia absolutely as follows : Vancouver Island—Indians, 5,325 ; Chinese, 3,183 ; whites, 28,259 ; total, 36,767. Mainland—Indians, 29,634 ; Chinese, 5,727 ; whites, 26,045 ; total, 61,406.

That, since the date of the last communication above set out, the census schedules in the department at Ottawa have been scrutinized, and, as a result, instead of placing the white population of Vancouver Island at 28,259, and of the mainland at 26,045, as shown by the Department of Agriculture, the white population appears to be distributed as between the mainland and island, as follows, viz :—

On the mainland, 37,293, and on Vancouver Island, 27,997.

It will thus readily be seen that, unless the government were prepared at the time of the session of the legislature, to accept as a basis of its promised redistribution measure, a population of whites upon Vancouver Island in excess of those upon the mainland, it was not in a position, in view of the information received from the Department of Agriculture, to introduce the redistribution measure at that time, and that consequently, if the census returns were to be a governing feature in framing the bill, nothing else could reasonably be done than to postpone the measure, which was accordingly done.

As to so much of the petition as states that the province is divided into eighteen constituencies, with a total registered vote of 15,560, and that of these voters 12,691 are registered in seven constituencies, which elect sixteen members, and the remaining 2,869 voters are registered in eleven constituencies, which elect seventeen members, the minister remarks that the number of registered voters in any particular constituency is not by any means an accurate indication of the number of persons who are eligible for the franchise in such constituency, inasmuch as no scrutiny has hitherto been made of the claims of persons applying to be registered as voters, and in some constituencies apathy and indifference in the registration of voters has been the rule, whilst in other constituencies a determined and persistent effort has been made to place names upon the register of voters. The minister, moreover, remarks that population naturally flows to the cities, which, in point of population, largely outnumber the outlying districts, including those districts where the principal industries of the country, such as farming, mining and lumbering, are carried on. That it has always been the policy of this province to accord the outlying districts just representation, and it is noteworthy that the real complaint of the petitioners seems to be that the cities are not accorded all, or nearly all, of the representation. That as to so much of the petition as asserts that the main-

land has an area of 366,300 square miles, whereas Vancouver Island embraces 16,002 square miles only; that the mainland portion has, therefore, the greater need of expenditure upon works of development, and that the said mainland portion contributes over two-thirds of the total revenue collected within the province, the minister observes that the principle has always been recognized by successive legislatures that, on account of its larger area, the mainland has greater need of expenditure upon works of development, and that, acting upon such principle, even in years when the revenue of the mainland did not equal that of Vancouver Island, larger expenditures in works of development were made upon the mainland than upon Vancouver Island, and ever since confederation, the proportionate expenditure for such works upon the mainland has largely exceeded what would have been its share, in proportion to population, and to the contribution of the mainland towards the revenue.

The increase of population upon the mainland has been of modern growth, but, as in the past, so at present, the appropriations for works of development largely exceed either its quota of population or its contribution towards the revenue, as a consideration of the public accounts for the last fiscal year abundantly shows. For instance, the grant for roads, streets and bridges upon the mainland was \$159,500, and upon Vancouver Island was \$56,000. For buildings and schools, the mainland grant was \$81,300, and upon Vancouver Island \$16,900. For surveys, the mainland estimate was \$48,000, and the island \$2,000. Upon education, the mainland grant was \$101,920, and upon Vancouver Island was \$73,220. Upon hospitals and asylums, the mainland grant was \$41,550, and the island \$16,300—showing total grants under these heads, upon the mainland, \$432,270, and upon Vancouver Island, \$164,420.

Taking the census return of 98,173 as the entire population of the province, the total appropriations under the above headings, for mainland and island (\$596,690), if equally apportioned on the per capita basis, would give \$6.08 per head, which, according to the distribution of population as between the mainland and island (mainland, 61,406; island, 36,767) would entitle the mainland to \$373,348, and the island to \$223,342, instead of the existing division of \$432,270 upon the mainland and \$164,420 upon the island. But if the expenditures are to be divided according to the population, other than Indians and Chinese (Indians especially, and Chinese, contribute but little towards provincial revenue), the advantage given to the mainland is made still more apparent. The last amended census returns give 37,293 as the mainland white population, and 27,997 as the island white population. This would give, out of the total appropriation of \$596,690, a per capita allowance of \$9.14, or \$340,858 to the mainland and \$255,832 to the island, and assuming with the petition (but which is not the case) that the people of the mainland now contribute two-thirds of the revenue, it is shown that the island by no means receives one-third of the appropriations granted by the legislature for works of development.

As to so much of the petition as asserts that at the last general election seven constituencies registering 12,591 voters (it omits mention of the number of votes actually polled) returned only four members as supporters of the government, while eleven small constituencies having 2,869 voters returned sixteen government supporters, and that one of the four government supporters elected by a large constituency having resigned before the meeting of the House, his place was supplied by an opponent of the government, the minister draws attention to the fact that, of opponents to the government, at the last general election, there were only five returned to the legislature; the remaining members were returned either as supporters of the government, or else as independent of either the government or its opponents: that the member to fill the vacant seat alluded to, was not elected as an opponent, and that the number of votes actually polled at the general election for candidates avowedly supporting the government, was equal to the number of votes polled for both opponents and independents combined. The minister further remarks that three of the five members returned in opposition to the government, were from the city of Victoria, which constituency returns four members, the fourth candidate returned being a government supporter. The highest vote polled in that constituency by the three members returned in opposition to the government was that of the senior member, who received 1,226 votes, the fourth or junior member



receiving 851 votes; the other members in opposition to the government were returned, one as the junior member for Yale, and the other as the junior member for Nanaimo district, the one receiving 396 votes, and the other 157 votes. The vote of the country was therefore overwhelmingly in favour of the government, and those who were pledged to deal with the government independently of its supporters or opponents.

As to so much of the petition as alleges that the government has promised consideration to a demand for financial aid to a new transcontinental railway, and that such demand is for a guarantee of interest at four per cent per annum upon bonds of the railway to the amount of \$6,000,000, the minister observes that no demand for any such guarantee has been made upon the province, but that the province has promised, and is prepared to accord, fair consideration to any proposition for financial aid, which may be within the capacity of and of advantage to the province.

The committee, concurring in the report of the Honourable the Attorney General, recommend that copies of this minute (if approved) be forwarded to the Honourable the Secretary of State, and the Minister of Justice, for the information of his Excellency the Governor General in Council.

Certified,

A. CAMPBELL REDDIE,  
*Deputy Clerk, Executive Council.*

*Mr. J. Twigg, Chairman Citizens' Committee, to His Excellency the Governor General.*

VANCOUVER, 6th November, 1893.

SIR,—With reference to my letter dated 11th August, 1893, I have the honour to forward to your Excellency the last instalment of the petition of the people of the mainland of British Columbia praying for the veto of the Parliament Buildings Construction Act, B. C., 1893, the earlier instalments with an aggregate of 6,268 signatures were forwarded on various dates to his Excellency the Earl of Derby. The present instalment brings the total number of signatures up to 6,326, a number exceeding that of two-thirds of the registered voters of the mainland, at the time the petition was circulated.

In the margin of the unsigned petition form, hereto attached, are inserted the authorities for the statements made in the body of the petition.

I am requested by the committee to indicate to your Excellency the following considerations as those upon which it is hoped that the veto power may be exercised.

1. The British North America Act places the finances of the province under the control of the provincial legislature.

2. According to the heading of the statutes of British Columbia, Her Majesty the Queen is an integral part of the British Columbia legislature, and also the enacting part of the legislature.

3. An appeal to Her Majesty for veto is thus an appeal to an integral part of our provincial legislature, and to the enacting factor of that legislature, the petition is therefore an appeal to the representative of Her Majesty in Canada, and to the same in Council.

The veto power is generally supposed to exist for the protection of minorities, the number of signatures subscribed to this petition, however, indicates that the exercise of the veto is desired by the majority of the people.

The present legislature of British Columbia being non-representative, in a degree which constitutes a denial of responsible government, the exercise of the veto would give effect to the popular will, and in exercising it the Governor General would defend provincial autonomy.

In the terms of confederation, it was stated that the Dominion government would readily consent to the introduction of responsible government, when desired by the inhabitants of British Columbia.

It is hoped (a.) that your Excellency will take the view that, by responsible government, ought to be understood a government in reality representative of, and, therefore, responsible to the people of the province.

(b.) That your Excellency will also take the view that responsible government having been consented to, the people of the province are entitled to its preservation and enforcement without being driven to assert it, by extreme means.

The prayer of the petition is not for absolute veto, but for veto of the Act until, and unless assented to by a legislative majority properly representative of the people.

I have, &c.,

J. TWIGG,

*Chairman Citizens' Committee.*

#### SCHEDULE A.

The mainland contributes over two thirds of the total revenue of the province.

From the public accounts of British Columbia for the fiscal year ended the 30/6/'92, page 10 E, the mainland revenue is as follows :—

Amount received from Dominion government in respect of railway belt on mainland.....	\$100,000
Revenue detailed as received from mainland.....	492,120
Amount received from sundry sources is \$221,123. Proportioning this according to population, the mainland quota with 60,782 out of 97,549 souls, would be	137,780
Total.....	\$729,900
From same page the island revenue is as follows :—	
Undetailed revenue from Island.....	\$224,994
Sundry sources in proportion to population.....	83,343
Total.....	\$308,337

The mainland revenue contribution is \$729,900, over two and one third times the island contribution of \$308,337.

The population is taken from census bulletin No. 5.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th January, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th December, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of British Columbia, in the fifty-sixth year of Her Majesty's reign (1893), chapters 1 to 14, 16 to 29, 31 to 33, 34, 35 to 50, 52 to 58, 60 to 67, received by the Secretary of State of Canada on the 28th day of April, 1893 ; and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts have been reserved for a separate report.

The undersigned also recommends that, if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor of the province for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 8th January, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th December, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts passed by the legislature of the province of British Columbia, passed in the 56th year of Her Majesty's reign (1893) received by the Secretary of State for Canada on the 28th day of April, 1893, as follows ;—

Chapter 15. "An Act respecting the Public Health."

By section 12 of this chapter, it is provided that the Provincial Board of Health may, subject to the approval of the Lieutenant Governor in Council, issue such regulations as the board deems necessary for the prevention, treatment, mitigation and suppression of disease, and that the board, may, by such regulations, among other things, provide for the inspection of steamboats and vessels, and the cleaning, purifying, ventilating and disinfecting thereof, and for detaining for such purposes any steamboat and vessel, and anything contained therein, and any person travelling thereby.

Chapter 30. "An Act to amend 'The Municipal Act, 1892.'"

Section 18 provides that in every municipality the council may make, alter and repeal by-laws for the purpose, among others, of regulating, with a view of preventing the spread of infectious or contagious diseases, the entry or departure of boats or vessels, and the receiving of all passengers or cargoes on board the same.

These provisions appear to relate, to some extent, to the matter of quarantine, which comes within the legislative powers assigned by "The British North America Act" to Parliament, and in respect of which statutes have been enacted by Parliament. Such provision cannot, in the opinion of the undersigned, have effect, except as to matters outside the control of the Parliament of Canada, and within the control of the province, as, for example, the passing of boats, vessels, passengers and cargoes from place to place within the province. As there is room for their application in such matters, the undersigned would not recommend the exercise of the power of disallowance with regard to these statutes.

Chapter 34. "An Act to provide for the erection of New Buildings for the accommodation of the Provincial Legislature and the Public Departments."

This Act recites that it is expedient that new buildings should be provided for the proper and needful accommodation of the provincial legislature, and the departments of the public service, and that the buildings now in use for such purposes are wholly inadequate therefor : that new buildings can be erected at a cost not exceeding \$600,000 ; and that authority should be given to pledge the credit of the province to provide such funds ; and it is enacted that the Lieutenant-Governor in Council shall have power to authorize the commissioner of lands and works to enter into a contract for the erection of such new buildings, the consideration money of the contract not to exceed \$600,000 ; that the Lieutenant-Governor in Council may pay and discharge obligations arising under such contract, out of such of the surplus moneys forming a portion of the Consolidated Revenue Fund of the province, as may be available therefor ; that the Lieutenant-Governor in Council may in addition to all other moneys authorized to be raised or borrowed by any other Act of the province, at discretion, borrow or raise any sum of money not exceeding \$600,000 by the sale of debentures or otherwise ; and that all sums so realized shall be paid in such manner as the Lieutenant-Governor in Council shall prescribe, to the Minister of Finance, and shall be deemed to be surplus money forming portion of the Consolidated Revenue Fund of the province, available for the purpose of discharging obligations under the contract hereinbefore referred to.

A petition signed by a great number of the inhabitants of the province has been presented to your Excellency in Council objecting to this statute, mainly upon the grounds, as alleged, that the proposed expenditure cannot be justified upon any ground



of necessity or expediency, and that it will involve an addition to the debt of the province, which will seriously curtail its ability to provide for necessary works of development; that owing to the rapid increase in the population of certain parts of British Columbia since the opening of the Canadian Pacific Railway, the legislative assembly of the province has not been for many years representative of the people of the province, and that the assembly is non-representative to an extent entirely subversive of the principle of responsible government. The prayer of the petition is not for disallowance of the Act complained of, but the petitioners pray that your Excellency may be pleased "to veto the statute, so that the same may have no force or effect, until and unless it be assented to by a majority of the members of a legislature properly representative of the people of the province."

The undersigned caused a copy of this petition to be sent to the Attorney General of the province, for the purpose of obtaining the views of the provincial government in regard thereto, and he has received in reply, through the Honourable the Secretary of State, a copy of a report of a committee of the Executive Council of the province, approved by his honour the Lieutenant Governor of the province, embodying the report of the Attorney General on the subject of the petition. The petition, together with the report of the Executive Council, is hereunto annexed and made a part of this report.

The undersigned observes that the various statements set forth in the petition are very largely met and explained by what is stated in the report of the Executive Council of the province.

The undersigned desires to point out that there is no power vested in your Excellency in Council to make a conditional disallowance, or to veto, as prayed for, or to suspend the operation of a statute, so that the same may have no force or effect, until and unless it be assented to by a majority of the members of a legislature, constituted differently from that which exists.

The undersigned would further observe that the power of veto possessed by your Excellency appears to be the power of disallowance reserved by the British North America Act.

The subject of the enactment complained of in the petition is one peculiarly for the legislature of the province to deal with.

The petitioners declare that for want of an Act to redistribute the representation of the province, the representation of the inhabitants of British Columbia is most inadequately provided for, to a degree which is equivalent to a denial of the advantages of responsible government, and that while the government of the province is supported by a majority of members of the house of assembly the number of members who do not support the government represent more than twice as many voters, as those who are government supporters.

These complaints, it is impossible for your Excellency to pass upon or to redress. The facts on which they are based are, moreover, in dispute. The remedy for the several grievances complained of, assuming them to exist, as alleged, lies with the legislature of the province.

The undersigned cannot, therefore, recommend that the power of disallowance should be exercised with respect to this Act.

Chapter 51.—"An Act to incorporate the Kaslo Electric Light, Power and Water Works Company, Limited."

The statute purports to give the company power to divert and appropriate so much of the waters of the Kaslo River and its tributaries and branches, as shall be deemed necessary and desirable for the purpose of supplying the inhabitants of the town of Kaslo and parts adjacent thereto with an abundant supply of water, also for the purpose of generating electricity, and to construct and maintain all erections, wires, wheels, raceways, dams, flumes, or other works necessary for making the water power available.

Chapter 59.—"An Act to incorporate the Osoyoos and Okanagan Railway Company."

This company is incorporated for the purpose, among others, of constructing and operating a line of railway from some point at the foot of Okanagan Lake in the pro-

vince of British Columbia, to a point on the Kettle River, at or near the place where the said river crosses the international boundary for the third time on its course towards the Columbia River, with power also to construct branch lines, and by the terms of the statute the company is given power, at any point where the terminus of the railway or any branch thereof crosses any navigable water, to acquire and hold as its own absolute property, piers, docks and water lots, and in and over the waters adjoining the same, to build elevators, storehouses, engine-houses, sheds, docks, piers, and other structures for the use of the company, and of the steam and other vessels owned, worked and controlled by the company, or of any other steam or other vessels, and to collect wharfage and store charges for the use of the same; also to erect, build and maintain all moles, piers, wharfs and docks necessary and proper for the protection of such works and for the accommodation and convenience of vessels entering, leaving or lying within the same, and to dredge, deepen and enlarge such works.

These provisions of the two last mentioned statutes, as well as any other provisions thereof, which are intended to empower the respective companies to divert the waters or occupy the bed of any river, are, in the opinion of the undersigned, ultra vires of the provincial legislature, so far as they relate to rivers which have been declared by the British North America Act to be part of the property of Canada, Parliament having the sole power to legislate concerning such property. Having regard, however, to other provisions which are unobjectionable, the undersigned does not deem it advisable to recommend the disallowance of either of these statutes. Any question which may be raised as to their validity may conveniently be left to be determined by the courts.

The undersigned, therefore, recommends that the several Acts mentioned in this report be left to their operation.

The undersigned further recommends that, if this report be approved, a copy of the same be sent to the Lieutenant Governor of the province, for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## BRITISH COLUMBIA—57TH VICTORIA, 1894.

## 4TH SESSION—6TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 20th October, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th October, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of British Columbia in the fifty-seventh year of Her Majesty's reign (1894), chapters 1 to 11, 13 to 17, 19 to 32, 34 to 61 and 64, received by the Secretary of State for Canada on the 19th day of April, 1894 ; and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Acts, viz., chapters 12, 18, 33, 62 and 63 have been reserved for a separate report.

The undersigned also recommends that this report, be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor of the province for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 20th October, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th October, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report upon the statutes of the province of British Columbia, passed in the fifty-seventh year of Her Majesty's reign (1894), and received by the Secretary of State for Canada on the 19th day of April, 1894, as follows :—

Chapter 12. "An Act respecting the Drainage and Dyking and Irrigation of Lands."

Section 63 provides that if any person shall in any manner wilfully injure any works executed hereunder, or any portion thereof, he shall forfeit for every offence a sum not exceeding fifty dollars, which, with the costs of repair, may be recovered upon summary conviction by any justice of the peace. The costs of repairing injury other than wilful may be similarly recovered.

Chapter 63. "An Act respecting the Victoria Electric Railway and Lighting Company, Limited."

Section 31 enacts that any person who shall injure, molest or destroy any of the lines, posts or other material or property of the company shall be liable to a penalty not exceeding one hundred dollars and costs, and in default of payment to imprisonment for a term not exceeding one month.

The malicious injury of property has been declared to be an offence by the Criminal Code, and adequate punishments have thereby been established for such offences. The subject is one which, in the opinion of the undersigned, properly falls within the scope



of criminal legislation, and enactments of the character in question would, therefore, appear not to be within the power of the provincial legislature. The undersigned apprehends, however, that no serious mischief could ensue from leaving these provisions to their operation. The courts having jurisdiction to declare the sections *ultra vires*, at the suit of any person who might be prejudiced thereby.

Chapter 18.—“An Act to amend the ‘Game Protection Act, 1892’ and amending Act.”

Section 3 provides that no person shall use or employ any net, seine, drag net or other engine, nor use salmon roe as bait, for the purpose of taking or capturing fish in any lake, pond, or standing water in this province, under a penalty not exceeding two hundred and fifty dollars, to be recovered in a summary manner before any justice of the peace.

It appears to the undersigned that such a provision would fall within the powers of parliament as it may appertain to sea-coast and inland fisheries, and that it could not, therefore, be enacted by a province. The several questions which have arisen relating to the conflict of jurisdiction upon this subject between parliament and the provincial legislatures, having been referred by your Excellency in Council to the Supreme Court of Canada for determination, the undersigned would consider it proper that this statute should not now be disallowed. It is anticipated that the decision of the court upon the reference in question, will set at rest all doubts which should be raised with regard to the validity of enactments such as the above, and if such decision should be in accordance with the view of the undersigned, as above expressed, it is assumed that this section, together with other provincial statutes which may be held to go beyond the limit of provincial powers, would be repealed.

Chapter 33. “An Act to amend the ‘Placer Mining Act, 1891.’”

Section 10 provides that “it shall be lawful for the gold commissioners, with the sanction of the Lieutenant Governor in Council, to grant a lease for any term not exceeding twenty years, of the bed of any river below low water mark for dredging purposes, for a distance not exceeding five miles, upon such terms as he shall think fit; provided always that every such lease shall reserve the right to every free miner, to run his tailings into such river at any point thereon, also to mine two feet below the surface of the water at low water mark by putting in wingdams, and whether such free miner shall locate before or after the date of such lease.”

Chapter 62, “An Act to authorize certain Dyking and Drainage Works in the District of New Westminster.”

Section 1 enacts that the commissioners shall have power to widen, straighten, deepen, divert, dam, scour, or cleanse any river, stream, drain, brook, pool, lake or water-course upon, or running through such lands, and to make, open, and cut, in or upon the same, any new water-course, side-cut, ditch or drain, and at any time to repair, alter or remove any bank, sluice, flood-gate, dam, tunnel, or other part of the undertaking.

Sections 6 and 7 are as follows:—

“(6.) The commissioners shall have full power and authority to divert the waters known as the Chilliwack River, by changing the course of the said waters (as at present flowing) so as to cause the same to flow from a point at or near Summit Lake into the Fraser River above Sheam.”

“(7.) The commissioners are hereby authorized and empowered to take and divert, at such point or points on the Chilliwack River as they may judge suitable and proper, and to appropriate and use for the purpose of generating electricity, so much of the waters of the stream as to the commissioners may seem necessary for the purpose of the works, or for any purpose connected with the works hereby authorized, with power to the commissioners to construct and maintain all erections, weirs, wheels, dams, race-ways, flumes or other works necessary for making the water power available, with the right to improve and increase the same.”

The undersigned observes that rivers having been declared by “The British North America Act” to be part of the public property of Canada, the sections quoted would be *ultra vires* of the provincial legislature, as applied to rivers which belonged to the province at the time it entered the union. In so far as this view is controverted by the

province, it is hoped that a judicial determination of the question may be reached upon the reference to the Supreme Court above referred to, and in the meantime should any practical difficulty arise, as between the Dominion and the province, or in reference to individual rights as to the application or validity of these sections, the question could, if necessary, be brought before the courts in an ordinary action.

The undersigned therefore recommends that the several statutes mentioned in this report be left to their operation, and that a copy of this report, if approved, be transmitted to the honourable the Lieutenant-Governor of the province of British Columbia for the information of his government.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## BRITISH COLUMBIA—58TH VICTORIA, 1895.

## 1ST SESSION—7TH LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 23rd of December, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd December, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of British Columbia, in the fifty-eighth year of Her Majesty's reign, 1895, received by the Secretary of State for Canada on the second day of March, 1895, chapters 1 to 17, 19 to 22, 24 to 61, 64 to 66; and he is of opinion that they are unobjectionable, and may be left to their operation.

The remaining Acts (chapters 18, 23, 62, 63, 67, 68 and 69) have been reserved for a separate report.

The undersigned recommends that, if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant Governor of the province for the information of his government.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd December, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd December, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Acts passed by the legislature of the province of British Columbia in the 58th year of Her Majesty's reign (1895) and received by the Secretary of State on the 2nd day of March, 1895, as follows:—

Chapter 18—"An Act respecting lands granted to the Dominion Government."

Section 4 provides that it shall be lawful for the Lieutenant-Governor, by order in council, to make such provisions as he may think proper, for defining and causing the title of the Dominion government to be registered under the land registry laws of the province, and section 7 provides that any order in council, made by the Lieutenant-Governor under authority of the Act, shall have the same force and effect as if enacted by statute of the legislature of British Columbia.

The undersigned assumes that it is not intended to authorize the Lieutenant-Governor to make an order in council, which would have the effect of impairing, in any wise, the title of the Dominion government in case it were not registered. Such legislation would, of course, be *ultra vires*.

It appears to the undersigned that by the section in question, authority is conferred upon the Lieutenant-Governor, which may be exercised with the scope of provincial legislative authority, and the undersigned does not consider it necessary to do more than call attention to the larger construction, which might possibly be urged and which, in his opinion, both as a matter of intent and as a matter of law, should be excluded.



Chapter 23.—“An Act to amend and consolidate the Acts for the protection of certain animals, birds and fishes.”

Section 7 makes it unlawful to export game out of the province.

The undersigned would consider this provision beyond the provincial authority, but inasmuch as it has in view the preservation of the game of the province, and similar provisions having been left to their operation in other provinces, he does not consider that it is a case for the exercise of the power of disallowance.

Chapter 62.—“An Act for the supply of water to the City of Nanaimo.”

Chapter 63.—“An Act respecting the amendment of the ‘Nanaimo Waterworks Act, 1895,’ and amending Acts.”

Chapter 67.—“An Act respecting the incorporation of the Stave River Electric and Power Company, limited liability.”

These chapters contain provisions which appear to assume the right of the provincial legislature to legislate with regard to rivers.

The undersigned has several times previously had occasion to comment upon similar legislation which is objectionable from the Dominion point of view. The question in difference upon this point between the Dominion and the provincial authorities is awaiting the determination of the courts, and pending the decision, the undersigned considers that these statutes might be left to their operation.

Chapter 67 also contains a provision stating that shareholders in the company whether British subjects or aliens, whether resident in Canada or elsewhere, shall have the right to hold stock in the company, and shall be eligible to office in the company.

Chapter 69, intituled “An Act to incorporate the Victoria Consolidated Hydraulic Mining Company, Limited,” contains a similar provision affecting aliens.

The undersigned would consider that these sections must fail in their object, in so far as they intend to confer rights upon aliens, because that subject is committed to the legislative authority of parliament.

The undersigned does not, however, consider this objection of such a character as to call for the exercise of the power of disallowance.

Chapter 68.—“An Act respecting the ‘Vancouver Incorporation Act’ and amendment Acts.”

The powers which are conferred upon the municipality of the city of Vancouver to make by-laws, are apparently in some cases in excess of those which could be granted by the legislature. A construction may, however, be adopted, which would limit the powers so conferred to purposes within provincial authority, and if, in framing the by-laws, a broader and objectionable construction should be acted upon, the courts would afford redress to any individual prejudiced thereby.

For the reasons stated, the undersigned recommends that the several Acts mentioned in this report be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor for the information of his government.

Respectfully submitted,

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND, 37TH VICTORIA, 1874.

2ND SESSION—26TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 3rd April, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th March, 1874.

*To His Excellency the Governor General in Council :*

A despatch of the Secretary of State for the Colonies to the Governor General is submitted, expressing, in effect, the assent of the Crown to certain statutes. This despatch should be communicated to the Lieutenant-Governor of Prince Edward Island.

But reference is made to a bill which is spoken of as a reserved bill, chapter 30, which is an Act to vest a certain portion, forty acres, of Government house farm, in the city of Charlottetown, for the purpose of a park and pleasure ground for the use of the public.

The object of this reference by the Colonial Secretary is on account of the Act having been passed on the 14th June, 1873, whereas the addresses of legislative council and assembly of Prince Edward Island, expressing their desire to enter into the Dominion, are dated 28th May, 1873, and the transfer of any public property after that date would clearly be incorrect, as regards its subsequently becoming a province of the Dominion.

Equitably, therefore, the property in question, being part of the government house farm, and thus an adjunct of public buildings, and, as such, coming within the designation of section 8 of the 3rd schedule of the British North America Act, 1867, was part of the property of the Dominion, and only required an order in council bringing Prince Edward Island into the confederation, to vest it legally in the Crown for the government of Canada. It is true that it has been the custom for the government of Canada to make over, by order in council, to the province such portion of the public property as they thought fit and appropriate for the use of the provincial legislatures and government, but it appears doubtful whether the legislature of Prince Edward Island could properly pass an Act in respect to property which equitably had already become that of the Dominion, and could thus dispose of it as they have done.

The question, however, submitted by the Colonial Secretary, is as to whether the government of Canada think that Her Majesty may be properly advised to assent to it.

With the remarks hereinbefore made, the undersigned has the honour to submit the matter for consideration of Council.

A. A. DORION,  
*Minister of Justice.*

*The Right Hon. Secretary of State for the Colonies to the Governor General.*

DOWNING STREET, 28th April, 1874.

MY LORD,—I have the honour to acknowledge the receipt of your despatch, of the 8th instant, inclosing a copy of an approved report of a committee of the Privy Council, recommending, for the reasons stated, that Her Majesty should not be advised to assent to the bill passed in June, 1873, by the legislature of Prince Edward Island, but reserved by the late Lieutenant-Governor, intituled: "An Act to vest a certain portion of Government House Farm in the city of Charlottetown for purposes therein mentioned."

In accordance with the recommendation of your government, I shall not advise the Queen to assent to this Act, which will not, therefore, come into operation. I request that you will so inform the Lieutenant-Governor of Prince Edward Island and that you will forward to him a copy of the report of the Privy Council.

I have, &c.,

CARNARVON.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 26th December, 1874.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd December, 1874.

The undersigned has the honour to report that at the session of the legislature of Prince Edward Island held in the early part of this present year, a bill was passed by both Houses, intituled: "The Land Purchase Act, 1874," which was reserved by the Lieutenant-Governor for the signification of your Excellency's pleasure.

Its objects are foreshadowed in the recitals thereto, which are:—

First: "That the leasehold tenures of this island have long been a subject of contemplation, and have proved seriously detrimental to the prosperity of this province and to the contentment and happiness of its people."

Secondly: "That it appears, from correspondence which has recently taken place between the government of this island and certain proprietors, that there is no reasonable hope of the latter voluntarily selling their township lands to the government at moderate prices.

Thirdly: "That it is very desirable to convert the leasehold tenures into freehold estates, on terms just and equitable to the tenants as well as to the proprietors."

It provides that the Colonial Secretary shall notify any proprietor owning five hundred acres of land, or upwards, that the government of the province intend to purchase his land under the provisions of the Act, after which the government and proprietor shall each nominate a commissioner to award the amount of money, and they are jointly to nominate a third commissioner.

The Act provides the necessary machinery for carrying such arbitration into effect, and provides further, as follows:—

Section 23.—"After hearing the evidence adduced before them, the commissioners, or any two of them, shall award the sum due to such proprietors as compensation or price, to which he shall be entitled by reason of his being divested of his land and all interests therein and thereto."

Section 24.—"The fact of the purchase or sale of the lands of any proprietors being compulsory, and not voluntary, shall not entitle any such proprietor to any compensation by reason of such compulsory purchase or sale, the object of this Act being to pay every proprietor a fair indemnity or equivalent for the value of his interest, and no more; and by the 25th section are regulated the circumstances which are to be taken into consideration by the commissioners in estimating the amount of compensation to be paid to the proprietors."



Under the 29th section the Lieutenant-Governor in Council is to nominate a public trustee, who, when the purchase money of the property shall have been paid into the treasury, is to execute a conveyance of the estate of the proprietor to the commissioner of public lands, which shall thereby vest in the commissioner of public lands an absolute and indefeasible estate of fee simple, free from all encumbrances of every description, and shall be held and disposed of by him as public lands, and shall also vest in the commissioner of public lands all arrears of rent due upon the said lands.

It further provides :

Section 34.—“When the full sum for any lands shall have been paid into the treasury, and the conveyance executed by the public trustee to the commissioner of public lands, the government shall be absolutely exonerated from all liability to any person or persons whomsoever, who may claim estate so conveyed as aforesaid, or any interest therein, except as is mentioned in the next section.”

Section 44.—“After the passing of this Act, no action at law shall be maintained by any proprietor for the recovery of more than the current and subsequent year's rent, and in case any such action is brought against any such tenant by any proprietor, such tenant may plead this Act in bar of such action, nor shall any execution issue on any judgment recovered or to be recovered for rent by any proprietor against any tenant in this island, excepting the current and subsequent accruing year's rent, and in case any such execution is issued, the supreme court, or a judge thereof, shall, on application, stay any such execution until the award of the said commissioners shall be made.”

2. In transmitting this reserved bill the Lieutenant-Governor forwards therewith certain documents.

The reasons which induced the Lieutenant-Governor to reserve the bill are given by him as follows :—

“The Act in question, affecting private rights, by enforcing a compulsory sale by proprietors of five hundred acres of land, or upwards, at prices to be determined under a system of arbitration, to which they are thereby compelled to be parties, I deemed it to be my duty to reserve it for the consideration of his Excellency the Governor General.

“For upwards of half a century ‘The Land Question,’ so called, has agitated the minds of the people of this province, and repeated attempts have been, from time to time, made by the local legislature to get rid of the leasehold system prevalent here, and the aid of the Imperial government has been frequently invoked for the purpose, by endeavoring to obtain its sanction to the establishment of a court of escheat, on the ground of the non-fulfilment by the grantees of the conditions of their grants from the Crown, but to which Her Majesty's government invariably refused to accede.

“In 1860 three commissioners were appointed to enquire into and adjust ‘the differences between landlord and tenant.’ The then proprietors, or a major part of them, were assenting parties to this commission. One commissioner was selected by the Secretary of State for the Colonies ; a second by the proprietors, and a third by the local legislature. Their report and award, characterized by the late Duke of Newcastle, then Secretary of State for the Colonies, as ‘able and impartial,’ was set aside, because the commissioners thereby devolved the duty of assigning the value of township lands, which they should have performed themselves, upon other parties not recognized by the commission. A copy of the commissioners' report and award accompanies the reasons of the Attorney-General, marked No. 1, and to this I beg to refer his Excellency the Governor General, affording, as it does, a complete history of the land question from the year 1767 to the date of the report.

“The desire finally to extinguish the leasehold system, so far as relates to lands still in the hands of the proprietors, continues unabated ; in fact it has received a fresh impetus since confederation, in view of the sum of eight hundred thousand dollars, appropriated by the Dominion government for the purchase of the proprietary rights in this province.”

The report of Mr. Attorney-General Brecken, briefly referring to the same matters as mentioned in the despatch of the Lieutenant-Governor, quotes particularly from the

despatch of the 13th March, 1869, from the then Secretary of State for the Colonies to the effect that, if confederation of Prince Edward Island with Canada were to ensue, the land question should be left as far as possible for the decision of those who, under the altered circumstances of the colony, would have to carry into execution any measures connected with it.

The Attorney-General further adds that the local government is led to believe that there is no reasonable prospect of some of the owners of township lands voluntarily disposing of their estates at moderate prices, and that others of them are not at all desirous of permitting their tenants to become freeholders.

Impelled by the peculiar circumstances of the case, and strengthened by the despatch of Earl Granville above alluded to, the legislature had passed the Act with the hope that it might be the means of settling forever this long agitated question, on terms just and liberal, as well to the proprietors as to the tenants.

The Lieutenant-Governor also transmits copies of correspondence between the local government and certain proprietors of lands and their agents on this subject.

The views of the different proprietors, as to parting with their property vary, but the tenor shows generally an indisposition on the part of the proprietors to dispose of their properties, whilst in some instances, they ask that a definite offer should be made to them.

There is also a statement submitted showing the names of the proprietors, their residences and number of acres owned by each, and the quantity of land owned by small freeholders, the former being 381,720 acres, and the latter 222,000 acres.

There is also a statement showing the quantity of land already purchased under the authority of a previous Loan Act, being in the aggregate 457,270 acres, at an aggregate amount of \$517,951; and a further purchase under an Act passed in 28th Vic., of nearly 7,000 acres. These purchases, however, appear to have been all made with the assent of the proprietors.

With the Lieutenant-Governor's despatch are certain memorials of proprietors, praying that the Act may not be allowed.

These have been since supplemented by memorials furnished either to the Secretary of State for the Colonies and transmitted by him, or direct to your Excellency.

3. The documents transmitted by Mr. Attorney-General Brecken show the transmission by the Duke of Newcastle in February, 1862, to the Lieutenant-Governor, of a copy of a report of the commissioners appointed to inquire into the land tenures of Prince Edward Island, together with the copy of the report which embraces a very full consideration of the whole circumstances, the same bearing date, 18th July, 1861.

As before mentioned, however, nothing was done upon this report.

In 1864, a deputation from the government of Prince Edward Island proceeded to England, when certain correspondence ensued between the Duke of Newcastle and themselves, and it appears that Sir Samuel Cunard proposed terms, and submitted a draft bill which he thought would bear out the matter.

These, however, equally led to the absence of any result.

In 1868, the matter was again brought forward by the Lieutenant-Governor, submitting a minute of the Executive Council, and praying the sanction of the Secretary of State to the measure which might obtain a settlement of this question; in reply to which the Duke of Buckingham and Chandos stated that he "fully recognized the propriety of the course which the Executive Council have taken in seeking to obtain the sanction of the Secretary of State, before introducing a measure, which would naturally tend to raise, in the minds of the people, expectations with which, in the result, it might be deemed inexpedient to comply."

"I make the recognition the more fully, because, after a careful consideration of the whole case, and of the grounds now put forward by the Executive Council in support of a law for the compulsory sale of the land of those proprietors, who were not parties to the Act of 1864, I am not prepared to advise Her Majesty to sanction such a measure.

"The views of former secretaries of state upon the subject, and the grounds upon which such views were based, have been so clearly explained in prior correspondence, that it appears to me unnecessary to do more now than to state that I find no special reason assigned on the minute of council, which, in my opinion, would justify, on the ground of public policy, the proposed direct appropriation of private property."

In February, 1869, correspondence was renewed between the Lieutenant-Governor of Prince Edward Island and the Imperial government, which led to the remarks of Lord Granville previously quoted, to the effect that decision as to the land question should be left to those who, under the altered circumstances of the colony by confederation, if it were carried out, would have to carry into execution any measures connected with it.

4. Several petitions are presented against the allowance of this bill; some as above stated, having been sent to the Secretary of State for the Colonies, and others direct to your Excellency.

In transmitting one presented in England, Lord Carnarvon requests the careful consideration of your Excellency's ministers in respect to it.

They submit that the proposed Act is subversive of the rights of property, and that it will prove most ruinous to proprietors in this colony, and a dangerous precedent to establish as a mode of allaying popular agitation. After entering upon details of the past, they submit that the Act is without a precedent in the history of legislation, and that even if it were called for, as constitutional as respects its objects, the mode of procedure adopted by it would prove most ruinous and harassing to the owners of property in that island. They allege that the government, which is practically irresponsible, as it cannot be sued in a court of law, might hold this Act over the unfortunate proprietor, who cannot force on the proceedings when once commenced, nor obtain compensation or costs when such proceedings have been abandoned; and they dispute the recitals to the Act and pray for disallowance of the same.

The other petitions allege various reasons in respect to which they, as proprietors and British subjects, would be much injured and damnified if the Act passed.

The allegations in these petitions are very forcibly urged, and represent features which cannot but be regarded as contrary to the principles of legislation in respect to private rights and property.

The undersigned is of opinion that the Act is objectionable, in that it does not provide for an impartial arbitration, in which the proprietors would have a representation, for arriving at a decision on the nature of the rights and value of the property involved, and also for securing a speedy determination and settlement of the matters in dispute.

Under all the circumstances of the case, the undersigned has the honour to recommend that the bill so reserved, intitled: "The Land Purchase Act, 1874," do not receive the assent of your Excellency in Council.

H. BERNARD,  
*Deputy Minister of Justice.*

I concur.

T. FOURNIER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 15th January, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd January, 1875.

Upon reference of a despatch from the Lieutenant-Governor of Prince Edward Island, and the Acts thereunder transmitted by him authenticated under the provincial seal, and being the Acts of the general assembly of the province enacted in the year 1874, the undersigned has the honour to report:—



That the same appear to him unobjectionable, and he recommends, therefore, that the same respectively should be left to their operation, viz.: chapters 2, 4, 5 to 7, 9 to 12, 14 to 20, 22 and 23.

H. BERNARD,

*Deputy Minister of Justice.*

I concur.

T. FOURNIER,

*Minister of Justice.*

*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 11th January, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd January, 1875.

Upon the despatch of the Lieutenant-Governor of Prince Edward Island, of the 5th September, 1874, transmitting certain Acts of the general assembly of that province, enacted in the session held in the year 1874, the undersigned has the honour to report as follows:—

Chapter 1. "An Act to amend the Act passed in the thirty-sixth year of the reign of Her Majesty, Queen Victoria, intituled: 'An Act to establish county courts of judicature in this Island.'"

Section 29 authorizes any county court judge to commit any person guilty of perjury before him or other officers of the court, to direct such person to be prosecuted for perjury, and to commit him or to take bail for his appearance.

The undersigned is of opinion that this is a matter of criminal law and procedure, and as such not within the competence of the legislature of Prince Edward Island. He suggests, therefore, that the legislature of the province should repeal the same.

A clause of similar purport is to be found in the statutes of Canada, 32 and 33 Vic., chap. 23, sec. 6, which, when the criminal laws of Canada are made applicable to that province, will answer the purpose intended by the 24th section above mentioned, and recommended to be repealed.

Chapter 8. "An Act to consolidate and amend the laws enabling the Supreme Court of Judicature to order the examination of witnesses upon interrogatories and otherwise."

Section 5 provides for the taking of examination upon oath, of witnesses in matters of the Supreme Court of Judicature, but it proceeds further, and enacts that if false evidence should be wilfully and corruptly given, every such person so offending shall be deemed guilty of perjury, and may be indicted as therein mentioned.

This section, in the opinion of the undersigned, partakes of the nature of criminal law and procedure, and is therefore not within the legislative competence of the legislature of that province.

The undersigned, therefore, recommends that the Lieutenant-Governor of Prince Edward Island should be invited to repeal the same. A provision to the same effect is made by the statute of Canada, 32 and 33 Victoria, chapter 23, which, when made applicable to Prince Edward Island, will attain the object desired by this clause.

Chap. 13. "An Act to incorporate the Prince Edward Island chamber of commerce."

This Act purports to establish an incorporated company "The Chamber of Commerce in Prince Edward Island," the objects of the same as defined by the second clause, are for such purposes only, as may be calculated to promote and extend the lawful trade and commerce of Prince Edward Island.

The question of incorporation of a company for such purpose was under the consideration of the Government in 1868, when the propriety of legislation of that province in a similar manner was doubted, and since that time it has been generally conceded that, as the regulation of trade and commerce is expressly committed to the parliament

of the Dominion of Canada by the British North America Act, 1867, it is not within the competency of a Local Legislature to pass such a measure.

A provision has been made generally for the incorporation of various boards of trade in the Dominion, by the Act of 1874, 37 Victoria, chap. 51, and that Act being applicable to Prince Edward Island, will enable the mercantile community of Prince Edward Island to obtain the incorporation desired.

The undersigned recommends, therefore, that the government of Prince Edward Island should be invited to repeal this Act.

It may also be mentioned that section 21 constitutes the crime of perjury.

For the reasons given in a similar case, above, the undersigned is of opinion that, being criminal law, it is not within the competence of a local legislature. This point, however, is merged in the broader one above stated, upon which the repeal of this Act is suggested.

Chapter 21. "An Act for amending the law relating to Controverted Elections of Members to serve in the General Assembly of Prince Edward Island, and for providing more effectually for the prevention of corrupt practices at elections."

Section 36 provides as to the subpoenaing and swearing of witnesses, and adds that they shall be subject to the same penalties for perjury.

This clause is taken from the Controverted Elections Act of Canada, 1874, 37th Vic., chap. 10, sec. 49, the provision in respect to perjury being within the competence of parliament.

It is suggested, however, that the enactment which thus provides penalties as to perjury is criminal law, and therefore not within the legislative competence of a local legislature.

The undersigned suggests, therefore, the propriety of the words "and shall be subject to the same penalties for perjury" being repealed.

H. BERNARD,

*Deputy Minister of Justice.*

I concur.

T. FOURNIER,

*Minister of Justice.*

## PRINCE EDWARD ISLAND, 38TH VICTORIA, 1875.

3RD SESSION—26TH GENERAL ASSEMBLY.

*Lieutenant-Governor Hodgson to the Secretary of State of Canada.*PROVINCE OF PRINCE EDWARD ISLAND,  
GOVERNMENT HOUSE, 19th May, 1875.

SIR,—I have the honour to transmit in triplicate two Acts passed in the late session of the general assembly, chaptered 5 and 6 respectively, and noted in the margin, which were assented to by me, under the usual opinion from the Attorney General, that I might constitutionally do so.

Chap. 5: "An Act to appoint a Stipendiary Magistrate for the City of Charlottetown."

Chap. 6: "An Act to amend the Act to extend the Criminal Jurisdiction of the Police Court in the City of Charlottetown."

These Acts, I am informed, were introduced and passed rather hurriedly, just previous to the close of the session, and it now appears some doubts have arisen whether the subjects dealt with by them, are within the constitutional jurisdiction of the local legislature under the terms of the Act of Confederation so called.

I also transmit the Attorney General's reasons for their passing, and explanatory of them, from which it will be seen, under the circumstances stated by him, how necessary some such measures are.

I beg respectfully to press upon the attention of the government the necessity of as early a decision as possible upon the Acts in question; one adverse to the right of the local legislature to deal with the subjects involved in them, must inevitably lead to most disastrous and ruinous consequences, as regards the affairs and future well-being of the municipality of the city of Charlottetown.

I have, &amp;c.,

R. HODGSON,  
*Lieutenant-Governor.**Reasons of Hon. Mr. Attorney General Brecken.*

CHARLOTTETOWN, P.E.I., 19th May, 1875.

Chap. 5.—"An Act to appoint a Stipendiary Magistrate for the city of Charlottetown."

By a late decision of the supreme court of this province (*Downing vs. City of Charlottetown*, P. E. I. Repts. Vol. II. p. 1), the police court of the city of Charlottetown was held to be incompetent to try a certain class of offences, arising under the by-laws of the mayor and common council of such city.

The police court being in fact, composed of the same persons who are judges under the Act, as are the mayor and common councillors of such city, it was deemed illegal and unconstitutional thus for persons to be judges in their own cause.

To obviate this difficulty, this Act was passed. It, in effect, merely transfers the jurisdiction formerly held by the mayor's court and the police court of this city, to a stipendiary magistrate, giving him only the same powers and authorities as were formerly exercised by the said two several courts.

These courts, prior to this act, exercised all the ordinary powers of a justice of the peace, besides having a summary jurisdiction in assaults and batteries, petty larcenies, trespasses and breaches of the peace within the limits of the city, with power to punish by fine not exceeding ten pounds island currency, equal to \$32.44 Dominion currency, or by imprisonment not exceeding thirty days in some cases, and in others not exceeding six months.



The salary of the magistrate is, by this Act, made payable, by the mayor and council, out of the funds of the city.

This Act is forwarded at this time, as it is greatly to be desired that it should go into operation at once, if not beyond the powers of our local legislature.

Chap. 6.—“An Act to amend the Act to extend the Criminal Jurisdiction of the police court of Charlottetown.”

This Act was passed for the purpose of substituting a stipendiary magistrate for the police court. It deprives the stipendiary magistrate of the power of punishing persons convicted of larcenies by fines, which hath hitherto been the law. Experience has proved that it is desirable to amend the law in this respect.

This Act is consequent on the Act, chap. 5, which accompanies it.

FREDERICK BRECKEN,  
*Attorney General.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 14th June, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th May, 1875.

The undersigned has the honour to report: That at the last session of the legislature of Prince Edward Island, a bill was passed by both houses, intituled: “The Land Purchase Act, 1874,” which has been reserved by the Lieutenant-Governor for the signification of the pleasure of your Excellency in Council.

The objects in this bill are the same as those contemplated in the bill passed during the previous session, intituled: “The Land Purchase Act, 1874,” which was also reserved for the signification of your Excellency’s pleasure, which was not assented to by your Excellency, for reasons contained in a report of the Minister of Justice of the 23rd December, 1874. By referring to this report, it will be observed that the reason adduced for withholding your Excellency’s assent, was chiefly, that no provision was made for an impartial arbitration, or in which the proprietors would have a representation, in arriving at the value of their property, neither did it seem to provide for a speedy determination of the matters in dispute between the parties interested.

In the Bill which is now referred, those objections have been removed, and a fair representation of the interests of all parties concerned has been provided for, and an impartial tribunal has been insured to each proprietor; the bill providing for the appointment of three arbitrators, one to be named by the land proprietors, another to be named by the Lieutenant-Governor in Council, and the third by your Excellency in Council.

The undersigned is of opinion, that the subject dealt with in the bill is one coming within the competence of a provincial legislature, and inasmuch as the objectionable features of the previous bill, have been removed, the undersigned recommends that the reserved bill, intituled: “The Land Purchase Act, 1875,” receive the assent of your Excellency in Council.

T. FOURNIER,  
*Acting Minister of Justice.*

*Order in Council giving Assent to the Act above mentioned, published in the Canada Gazette on the 26th day of June, 1875, Vol. VIII., No. 52, page 1712.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd November, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th October, 1875.

Upon the Acts passed by the general assembly of the province of Prince Edward Island at its session held in the 38th year of Her Majesty’s reign, being the third ses-

sion of the twenty-sixth general assembly convened in the said island, the undersigned has the honour to report that the right of disallowance ought not to be exercised in respect of the following Acts, and he, therefore, recommends that they be left to their operation, chapters 2 to 5, and 7 to 31 inclusive.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 30th October, 1875.*

DEPARTMENT OF JUSTICE, OTTAWA, 27th October, 1875.

With reference to the statutes of the province of Prince Edward Island passed in the session of 1875, the undersigned begs respectfully to report as follows:—

Chap. 1. "An Act to incorporate the Merchants, Marine Insurance Company of Prince Edward Island."

By this statute certain persons are incorporated under the above title.

By the 2nd section it is provided that the company shall have power to make with any person or persons, all insurances connected with marine risks against loss or damage, either by fire or by peril of navigation of or to any vessel, &c., either seagoing, or navigating upon the lakes, rivers or navigable waters. It appears to the undersigned that under the express language of this clause it is attempted to give the company power to do an insurance business with persons not residents of the provinces, in respect of risks on vessels, not touching provincial ports, in a word to do a universal insurance business. The power of provincial legislatures to incorporate insurance companies is to be found, if at all, in the eleventh subsection of the 92nd section, British North America Act, 1867, which gives to the local legislatures authority to make laws for the incorporation of companies with provincial objects.

It appears to the undersigned that the powers attempted to be conferred on this company are beyond any fair construction of these words; and he recommends that the attention of the government of Prince Edward Island be called to the Act, with a view to its amendment, by such a limitation of the powers of the company, as may obviate this objection.

Chap. 6. "An Act to amend the Act to extend the Criminal Jurisdiction of the Police Court in the city of Charlottetown."

This Act is in amendment of 22 Vic., chap. 3, of the statutes of Prince Edward Island, intituled: "An Act to extend the Criminal Jurisdiction of the Police Court in the city of Charlottetown."

By that Act it was provided that the police court of the city of Charlottetown should have power to hear and determine in a summary manner, certain larcenies and the receiving of stolen goods within certain limits, and to punish the offender by fine not exceeding ten pounds, or by imprisonment with or without hard labour not exceeding six months.

By the Act now under consideration it is provided that the stipendiary magistrate shall have the power so conferred upon the police court: and by the 2nd and 3rd sections it is provided that the penalty for the crimes shall be altered by striking out the words "by fine not exceeding ten pounds."

It appears to the undersigned that this latter amendment is an interference with the criminal law, beyond the competence of the local legislature, and that the attention of the Government of the island should be called to this Act, with a view of so amending it as to obviate this objection.

EDWARD BLAKE,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND, 39TH VICTORIA, 1876.

4TH SESSION—26TH GENERAL ASSEMBLY.

*The Lieutenant-Governor to the Hon. the Secretary of State for Canada.*

GOVERNMENT HOUSE, PRINCE EDWARD ISLAND, 12th May, 1876.

SIR,—I have the honour to transmit herewith for the consideration and approval of his Excellency the Governor General two Acts passed in the late session of the legislature of this province; one intituled: "An Act to amend the Land Purchase Act, 1875"; the other intituled: "An Act relating to certain departments of the Public Service." The first named is in triplicate, sealed and certified in the usual manner, and accompanying it are the reasons, in duplicate, assigned by the Attorney General for its passing; the second is in duplicate, also duly sealed and certified, and, likewise, accompanied with the reasons in duplicate, assigned by that officer for its passing.

The Act amending the Land Purchase Act, 1875, was reserved by me for the signification of his Excellency's pleasure thereon. To the Act relating to certain departments of the public service, my assent was given.

I beg respectfully to call his Excellency's attention to the Attorney General's report, and to his reasons therein stated, for the passing of the Act amending the Land Purchase Act, 1875, in which I concur, and which appear to me so pertinent and cogent, and I think so clearly show how necessary its provisions are to the effectual working of the Act alluded to, as to call for no particular observations on my part, beyond expressing my hope that it will receive his Excellency's favourable consideration.

The Act relating to certain public service departments, passed with the view of rendering them more efficient, will, I trust, have the desired effect, and claims, in my opinion, his Excellency's favourable consideration.

The land commissioners' court standing adjourned till the 1st day of July next, it is very desirable to know his Excellency's pleasure as regards the Act amending the Land Purchase Act previous to that period.

It will be perceived that the Act relating to the public service assented to by me, expressly declares that it shall come into operation on the first day of July next, and the complications would be serious if, after the changes contemplated thereby have been carried out, his Excellency should think fit to refuse his assent to it; and, I therefore venture to express a hope that it may be convenient for his Excellency to signify his pleasure in relation to this Act also before the day specified.

I have, &amp;c.,

R. HODGSON,

*Lieutenant-Governor.*

*Report of Hon. Attorney General, setting forth reasons for the passing of the Act to amend  
"The Land Purchase Act, 1875."*

ATTORNEY GENERAL'S OFFICE, CHARLOTTETOWN, 6th May, 1876.

This Act was passed by the legislature of this province last session for the purpose of removing doubts as to the meaning and construction of some of the provisions of "The Land Purchase Act, 1875," and to extend its powers.

By the 28th section and subsections of said Act, it is provided that the commissioners appointed thereunder, in estimating the amount of compensation to be paid to a



proprietor for his estate, should take into consideration the price at which other proprietors had heretofore sold their lands to the government, the number of acres under lease, the length of leases, the rent reserved, the arrears, the years over which they extend, and the probability of their being recovered, the number of acres unleased and their value, the gross rental actually paid for the previous six years, with the expenses incident to their collection, the number of acres held adversely, the reasonable probabilities of the proprietor sustaining his claim against squatters and the expenses attending thereon, the performance or non-performance of the conditions in the original grants from the crown, the effect of such non-performance, and how far the several despatches from the English Colonial Secretaries to the Lieutenant-Governor of this island, or other action of the Crown or government have operated as waivers of any forfeitures, the quit rents reserved in the original grants and how far the payments of the same have been waived or remitted by the Crown.

Proceedings have been taken in many cases under "The Land Purchase Act, 1875," by the commissioner of public lands, for the purchase of the estates of proprietors, and awards have been made by the commissioners appointed to adjudicate thereon. The awards made in those cases adjudicated upon by the commissioners, of whom the Right Honourable Hugh Culling Eardly Childers was chairman, were on the face of them silent as to the matters set forth in the sections 28 and its subsections, although, in fact, they were as fully investigated and inquired into by the commissioners, as the nature of the several cases would permit of, and were taken into their consideration in estimating the value of the lands.

This section was looked upon and construed as merely directory of the matters they were to consider in forming their conclusions as to the nature of the proprietor's estates. It never was contemplated as enacting matters which the commissioners should be bound specifically to set out on the face of their awards, such a construction as that would operate to defeat the object of the Act entirely, inasmuch as no specific award could be made on some of the points, such for instance as the boundaries of the land held by each squatter without endless trouble and expense.

The awards were drawn in general terms, simply stating the sum awarded to the proprietor, giving no description of the land or the acreage, and making no reference to the matters mentioned in section 28. A large number of the proprietors whose estates were thus awarded for, have not appealed from the awards; but the decision of the supreme court has thrown doubts upon the validity of these awards, which doubts it is essential should be removed. Applications were made in two cases on behalf of the proprietors (Miss Sullivan and the Honourable Ponsonby Fane) to restrain the public trustee from executing a conveyance of their estates under section 54 of the main Act, and to set aside the awards on the grounds that they did not expressly find and determine on their face the matters mentioned in said section 28 and subsections; and that they were uncertain, inasmuch that they did not describe the lands by metes and bounds nor give the acreage.

The supreme court of this province has decided in favour of these objections, and has quashed the awards in both of the cases argued before them.

The commissioner of public lands has appealed Miss Sullivan's case to the Supreme Court at Ottawa; negotiations for a peaceful settlement of the Fane estate are pending.

I have no hesitation in stating that the intention of the legislature was, that the facts and circumstances set forth in the said section 28 and subsections were merely to be taken into consideration by the commissioners in valuing the land, and not that the finding on each fact and circumstance should be specifically set forth in their awards.

Indeed, it would seem, from the very matters themselves, that they were intended more as guides to the commissioners in making their awards, than subjects for any specific finding: such, for instance, as the probabilities of proprietors recovering land from squatters, and the effect of despatches from the Colonial Office relative to the performance and non-performance of the conditions, under which this island was originally granted away by the Crown.

For the purpose of carrying out the intention of the local legislature, this Act provides that no awards heretofore made, or hereafter to be made, shall be void by

reason of the said facts and circumstances not being expressly found in such awards, but still retains to the Supreme Court the power of remitting them back to the commissioners, in cases where they do not contain descriptions of the estates, and also power to restrain the public trustee from executing a conveyance of such estates, until a description shall be settled by the court. It also extinguishes all quit rents and arrears thereof due on all estates adjudicated on, and releases the proprietors from all liability on account thereof.

The Act also makes provision to meet the case of James E. Montgomery, Esq., who made an application to the Supreme Court to have the award in his case remitted back to the commissioners to correct an alleged omission. It appears that between the time of making the award and the order to remit it back, the Right Honourable Hugh Culling Eardley Childers, the commissioner appointed by his Excellency the Governor General, resigned his position and left this province; doubts were consequently entertained whether the court as constituted after that gentleman's vacancy had been filled up, would be competent to review the matters taken in consideration by the commissioners who made the award.

The Act gives Mr. Montgomery power to appoint a new commissioner, and provides for the mode of procedure; it also empowers the commissioners, if they think fit, to make a new award, and they are not to be tied down to the sum named in the award so remitted to them.

These provisions and powers are not to be confined to Mr. Montgomery's case, but are to be general in their application, and are intended to apply to any similar case that may arise in working out the Land Purchase Act.

The Act also makes provisions to meet the case of the estate of John Winsloe, a lunatic.

The Master of the Rolls declined to appoint a commissioner to act on behalf of the proprietors, deciding that the provisions of the Land Purchase Act did not provide for such a case. This Act supplies this defect by declaring that the law shall extend to such cases.

This estate of John Winsloe is the only estate owned by a lunatic proprietor, and as the lands surrounding it have been purchased under the Compulsory Act, it is thought necessary to make the law plain enough to embrace John Winsloe's estate.

There is also provision made that, where notices for hearing cases have been given under section 14 of the principal Act, and such hearings from some cause or other have not taken place, that the proceedings are not to abate on that account, but that fresh notices may be given.

There is a necessity for this amendment.

The Act also extends the time stipulated in section 2 of the main Act for notifying proprietors of the government's intention to purchase their estates. There are one or two small estates that will elude the operation of this Act, if this amendment is not sanctioned.

It is proposed to extend the time for a further period of sixty days from the publication of his Excellency the Governor General's assent to this Act.

Provision is also made to meet the case of a commissioner, who may be disqualified to act, on account of relationship to a proprietor, by authorizing the appointment of a new commissioner, *ad hoc*—a case has arisen which has rendered this provision necessary. The deed from the public trustee to the Commissioner of Public Lands, on its production in any court of law or equity in the province, is to be received as *prima facie* evidence that the proceedings taken under the Land Act have been regularly complied with; this provision is, in my opinion, very necessary; without it, it will be difficult to protect the interests of the government of this province, and will not, I think, work injustice to individuals.

Proprietors, under this Act, will be required, before receiving the amount of their award, to deposit with the government their muniments of title, leases and plans.

Without this provision it will be difficult, if not impossible, for the Commissioner of Public Lands to carry out the sale of the lands to the tenants or occupiers.

The Act extends the definition of the term "proprietor" so as to include tenants *in tail*; this has become necessary in consequence of the decision come to by the Supreme Court, that the Land Purchase Act, 1875, only extends and applies to owners of lands in fee simple. As estates tail in land, situate in this province, may at any time, be barred by the tenant *in tail*, who can exercise as full a disposing control over such estates as a tenant in fee, it is not considered that this provision is of an objectionable or exceptional character. Provision is made that nothing in this Act shall, in anyway, affect the case of Miss Sullivan, appealed from the Supreme Court of this province to the Supreme Court of the Dominion of Canada.

All the provisions of this Act, are in my opinion, absolutely necessary for the satisfactory and speedy winding up of the long vexed land question of this province. It involves no new principle, *quoad* the intentions of the framers of the principal Act, and will not work any wrong or injury to any proprietor, and is really an Act to remedy practical defects many of which were not foreseen when the Land Purchase Act, 1875, was passed, and have arisen chiefly from the construction put upon that Act by the Supreme Court of this province.

As the Land Commissioner's Court stands adjourned to the 1st July next, it is very desirable to obtain his Excellency the Governor General's decision upon the Act in question, before that date, if possible.

FREDERICK BRECKEN,  
*Attorney General.*

*Report of the Hon. the Minister of Justice, approved by His Excellency, the Governor General in Council on the 26th May, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd May, 1876.

Upon a despatch from the Lieutenant-Governor of Prince Edward Island, dated the 12th May instant, and submitting an Act passed by the legislature of the province of Prince Edward Island at its late session, intituled :—"An Act relating to certain Departments of the Public Service;"

The undersigned has the honour to recommend that your Excellency in Council do not exercise the right of disallowance thereof, but that the same be left to its operation.

EDWARD BLAKE,  
*Minister of Justice.*

*The Lieutenant Governor to the Hon. the Secretary of State of Canada.*

GOVERNMENT HOUSE, PRINCE EDWARD ISLAND, 15th June, 1876.

SIR,—I have the honour to transmit, in duplicate, an Act, chap. 3, intituled : "An Act further securing the independence of the General Assembly," passed in the late session of the local legislature, duly certified and sealed under the provincial great seal, and also to transmit therewith, in duplicate reasons assigned by the Solicitor General, in the absence of the Attorney General, for its passing, to which Act my assent was given.

The period for which the present House of Assembly is elected, as defined by statute, will expire in the month of April next, and my government have informed me that it is their intention to advise a dissolution, in order that a general election may take place in the month of August next, which, they assert, will be the time most convenient to the constituency for such purpose.



Under these circumstances, it is very desirable that his Excellency the Governor General's pleasure should be pronounced upon the Act in question, previous to a dissolution, as effecting the status of persons eligible for seats in the local legislature, and I therefore beg to express the hope that it may be convenient for his Excellency to signify his pleasure thereupon at an early day.

I have, &c.,

R. HODGSON,  
*Lieutenant-Governor.*

*Reasons of Hon. Mr. Solicitor General Sullivan.*

SOLICITOR-GENERAL'S OFFICE, CHARLOTTETOWN, P E.I., 15th June, 1876.

Reasons for enacting the following statutes, 39th Victoria, cap. 3: "An Act further securing the Independence of the General Assembly."

This Act was passed, as its title indicates, for the purpose of securing the independence of the general assembly of this province. Previous to its enactment there was no limit to the number of officials or persons in public employments, who might hold seats in the local legislature, many of whom, under the then existing law, were not required to seek re-election on obtaining such appointments, nor was there any law preventing persons from holding seats in the provincial legislature whilst being members of the Senate or of the House of Commons of Canada. This state of things was considered derogatory to the independence of the local legislature, and the above-mentioned statute was enacted for the purpose of limiting the number of officials and others in public employment, who may hold seats in the general assembly, as well as abolishing dual representation.

The Act also contains ordinary, and what has been deemed necessary provisions, for the regulation of the mode in which the Speaker and other members of the assembly may resign their seats.

W. W. SULLIVAN,  
*Solicitor General.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 21st July, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th June, 1876.

The undersigned has the honour to report:—

That by a despatch of the 15th June instant, the Lieutenant-Governor of the province of Prince Edward Island transmits an Act passed in the last session of that Island:

Chapter 3, intituled: "An Act further securing the independence of the General Assembly," together with the reasons assigned by the Solicitor General for its passing, to which Act the Lieutenant-Governor had given his assent.

The Lieutenant-Governor, under the circumstances mentioned in his despatch, expresses a hope that the pleasure of the Governor General may be pronounced thereupon at an early day.

Upon perusal of the Act, and of the report of the Solicitor General of Prince Edward Island, the undersigned has the honour to recommend that the right of disallowance in regard to this Act of the legislature of Prince Edward Island, chapter 3, and intituled: "An Act further securing the Independence of the General Assembly," be not exercised.

I concur.

R. W. SCOTT,  
*Acting Minister of Justice*

H. BERNARD,  
*Deputy Minister of Justice.*

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*Report of the Hon. the Minister of Justice approved by His Excellency the Governor General in Council on the 21st July, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th June, 1876.

Reference is made of a despatch of Sir Robert Hodgson, Lieutenant-Governor of Prince Edward Island, inclosing certified copy of an Act passed by the legislature of that island, 39th Vic., cap. 5, being "An Act to facilitate the purchase of the Estates of Proprietors under the Land Purchase Act, 1875."

The Despatch also transmitted the report of the Solicitor General, with reasons for its passage.

The Lieutenant-Governor remarks that the Act in question will be a valuable auxiliary to the Land Purchase Act, 1875, and that as several of the proprietors are desirous of availing themselves of its provisions, he ventures to express the hope that it will receive the favourable consideration of the Governor General, and that it may be convenient for his Excellency to signify such his consideration at an early period.

The report of the Solicitor General states, that the statute empowers the Commissioner of Public Lands to accept voluntary conveyances from proprietors, for whose lands awards have been made under the Land Purchase Act, 1875.

In that Act there is no provision authorizing such conveyances, and several proprietors have expressed their willingness to execute deeds on payment to them of the sums awarded in their favour. This Act was passed to legalize such conveyances and payments.

Such is the effect also of the preamble to the Act, which is borne out by the details of the Act itself.

The undersigned recommends, therefore, that the right of disallowance by his Excellency the Governor General, of an Act of the legislature of the province of Prince Edward Island, passed on the 29th April, 1876, and intituled: "An Act to facilitate the purchase of the estates of proprietors under the Land Purchase Act, 1875," be not exercised.

R. W. SCOTT,  
*Acting Minister of Justice.*

*Mr. Edward J. Hodgson to the Hon. the Secretary of State for Canada.*

OTTAWA, 8th June, 1876.

SIR,—The legislature of Prince Edward Island during the last session, passed an Act in amendment of "The Land Purchase Act, 1875," which very seriously affects the rights and the property of persons holding land in that province.

The Act was introduced and passed through the legislature without any notice to those who will be affected by its provisions, and it was only to-day that I had an opportunity of partially making myself acquainted with its contents.

The Lieutenant Governor of Prince Edward Island declined to give his assent to it, and reserved it for the consideration of his Excellency the Governor.

The Act is for the purpose of giving effect to certain awards considered to be void by those whose property is dealt with by them. An award similar to these now attempted to be legalized, has been declared to be void by the Supreme Court of Prince Edward Island, and the propriety of the decision is now under the consideration of the Supreme Court of Canada.

In one case, one of my clients, Miss Helen McDonald, of Montreal, has moved the Supreme Court of Prince Edward Island to set aside her award. The Act, if assented to, will have the effect of declaring her award to be valid, and, not only so, but there are no provisions made for indemnifying her in the costs incurred by her in the proceedings she has instituted.

In my own case, the commissioner who acted for me last November went to England, and has only just returned. I intended to have moved to set aside the award, but required his affidavit to enable me to do so. I am now in a position to obtain it, but should I commence proceedings to set it aside, and if even succeed in so doing, this Act will, by reason of its retroactive aspect, give validity to an instrument containing defects which the Supreme Court has already declared are fatal to an instrument precisely similar in its terms; and not only will this injustice be wrought, but I shall be compelled to pay the costs for instituting proceedings which, at the time I commenced them, I had a clear legal right so to do, but which I am deprived of by *ex post facto* legislation.

Memorials showing these and still greater hardships are in course of preparation, and his Excellency will be prayed to withhold his assent from this measure. The secrecy and celerity with which it was introduced and carried, is the reason why memorials against it have not been sooner presented, for it is a matter of impossibility for parties residing thousands of miles from Prince Edward Island to become acquainted with proceedings such as these, except by the ordinary course of the transmission of news through the post.

I, therefore, respectfully request that his Excellency will be pleased to delay the consideration of this Act, until he has an opportunity of also considering the memorials which will be presented against it.

I have, &c.,

EDWARD J. HODGSON.

*Mr. Stewart to His Excellency the Governor General.*

SERATH GARTNEY, P.E. ISLAND, 8th June, 1876.

MY LORD,—I am now about to hand in my title deeds, and those of my late father, to the Prothonotary of the Supreme Court of Judicature in this Island. Having protested against every stage of "The Land Purchase Act, 1875," I now most respectfully beg to protest against this, the last compulsory enactment to which I expect to be subjected under that Act, by virtue of which the two commissioners who signed the award, apportioned seventy-six thousand five hundred dollars to me, for an inheritance worth, at least, five times that amount. Your lordship is in possession of the memorial and memorandum which I had the honour of addressing to the Earl of Carnarvon, and which he transmitted to your lordship for your consideration.

I have, &c.,

ROBERT BRUCE STEWART.

*Mr. Edward J. Hodgson to His Excellency the Governor General.*

LIBRARY OF PARLIAMENT, OTTAWA, 17th June, 1876.

*To the Right Honourable the Earl of Dufferin, K.C.B., &c., &c., Governor General of Canada.*

MAY IT PLEASE YOUR EXCELLENCY:—

As one of the proprietors of lands in Prince Edward Island, and also as counsel for all the English proprietors and nearly all those resident therein, I venture to address your Excellency on their behalf, with reference to an Act passed by two branches of the legislature of Prince Edward Island (but not assented to by Sir Robert Hodgson, the Lieutenant-Governor), intituled: "An Act to amend the Land Purchase Act, 1875."



Since the passing of the Land Purchase Act, 1875, the following proprietors have received what has been awarded for their estates, and, therefore, I do not speak on their behalf, viz. :

- |                            |                     |
|----------------------------|---------------------|
| 1. Robert Bruce Stewart.   | 4. William Cundall. |
| 2. S. C. B. Ponsonby Fane. | 5. Miss Cundall.    |
| 3. George W. DeBlois.      |                     |

I left Charlottetown, P.E.I., last Monday week, to attend the Supreme Court of Canada, for the argument of Miss Sullivan's case under this Act. At that time the proprietors, whose names I have given above, are those only who have been paid, for the great majority of the remainder are still pending, eleven months having elapsed since the unfortunate owners have been brought before this court; deprived of their right to receive the arrears of rent due them, and still unable to obtain their money.

The Act amending the Land Purchase Act has been reserved for the special consideration of your Excellency as the Governor General of Canada, and I humbly petition your Excellency to disallow that Act, for the reasons which in this memorial I shall state for your Excellency's consideration.

As I shall have occasion to make frequent reference to the awards made by the commissioners, it would be convenient if I should set out the form in which they have been made, it is as follows (omitting the title):—

The sum awarded under section 26 of the said Act by us commissioners appointed under the provisions of the said Act is \$

*Signatures.*

It is provided that the statute reserved for your Excellency's consideration that no award heretofore made, or hereafter to be made, shall be void by reason of its not finding any of those facts, which by the Land Purchase Act, 1875, it was bound to have found expressly.

I shall assume that the decision of the Supreme Court of Prince Edward Island in Miss Sullivan's case is valid. True, an appeal has been taken out against it, but until reserved it must be considered to be law, and the legislature must have believed very strongly in the validity of the judgment, or they would not have passed a legislative enactment to reserve it.

Now, by that decision, it was declared to be the duty of the commissioners, specifically, to find certain matters in issue submitted to their consideration, which are set forth in section 28 of "The Land Purchase Act, 1875," among others,

- (1.) The quit rents reserved to the crown.
- (2.) The effect of the non-performance of the conditions of the original grants, if they found they had not been performed.
- (3.) The arrears of rent.

There are various other matters in section 28, but I desire to call your Excellency's attention to these three especially. The Supreme Court held that it was the duty of the commissioners to find these matters on the face of their award, because, if they did not, the proprietor would be seriously prejudiced. For instance, the quit rents reserved to the Crown by the original grants have, by an Act of the legislature of Prince Edward Island (14 Vic., chap. 3) being assigned to the government of that province, subsection *e* of the 28th section of the "Land Purchase Act," directs the commissioners to consider (and, as a necessary consequence, I submit to *determine*, for it is difficult to understand why any matters were referred to them, unless it were that they *should* determine them) "the quit rents reserved in the original grants, and how far payments of the same have been remitted by the Crown." This is a legislative declaration that there is a question whether the quit rents have been waived or remitted by the Crown. Now, the effect of the complete absence of any reference to the quit rents in the award might have this effect: That a sum (say \$20,000) might have been deducted from a proprietor, and a balance of say \$80,000, awarded him, but this fact not appearing when the \$80,000 had been paid into court for the proprietor. There would be nothing

to prevent the Attorney General from coming into court and by information or proceeding in the nature of such, claiming the quit rents over again. It would be unavailing for the proprietor to plead that this matter had been determined, and that already thousands of dollars had been deducted from him. He could not plead the award. It is perfect. Silent as to this fact, and, by its terms, is expressed to be made, not in pursuance of "The Land Purchase Act, 1875," but only of its 26th section.

The Attorney General when presenting his claim would, under section 40 of the last mentioned Act, be entitled to the quit rents if found to be due; and the unfortunate proprietor would be compelled to pay them a second time."

Now the legislature of Prince Edward Island recognized this mode of viewing the case to be correct, for by the Act now petitioned against, section 3, it is provided "no proceedings either *in personam* or *in rem* shall be commenced, prosecuted or maintained in any court of law or equity for the recovery of any quit rents reserved in the original grants, or the lands of any proprietor, for which any award has been made under "The Land Purchase Act, 1875," and all such quit rents shall be deemed and held to have been and to be absolutely and for ever released by such award, and such award shall and may be pleaded in law by any person or persons whomsoever, of any action brought for the recovery of such quit rents."

This provision is more fair and just, and gives to the proprietor that protection which he is entitled to.

But it is evident that if these inefficient and illegal awards are to be rendered valid, the proprietors whose lands are dealt with, are equally entitled to protection from the consequences which are certain to ensue from all omissions to find respecting—

- (1.) The conditions of the original grants from the Crown.
- (2.) The performance or non-performance of these conditions.
- (3.) The effects of such non-performance. ("The Land Purchase Act, 1875," section 28, subsection *e*.)

A course somewhat similar to that already pointed out regarding the quit rents would be pursued, but with consequences still more serious to the proprietor.

The Crown has ceded all its rights in the lands in Prince Edward Island to the government of that colony. Having got possession of the proprietors' lands, it would be an easy matter to procure an inquest of office, to find whether the conditions of the original grants have been preformed. But it may be said, if upon the execution of this inquest of office, it were found that the land is liable to escheat, how could it effect the proprietors? Very seriously, and in this way—upon the resumption of the lands by the government of Prince Edward Island, every tenant is liable to be ejected from his farm, and under the covenant of quiet enjoyment contained in his lease, he would have his remedy by an action for damages against his landlord. The tenants who have had no leases would have no cause to fear from the action of the government, nor, indeed, would those who have leases, they would be well recouped for any temporary dispossession or liability to such, but the power of forcing a landlord into court to answer actions of damages by hundreds of tenants would never be allowed to lie dormant, stripped of their property, allowed in many instances not one-third of its value, the unfortunate proprietors never would be allowed to withdraw from the island the pittance they have been awarded, in order to invest it in some other portion of Her Majesty's realm, where to own land is not considered in the light of a crime.

This, in truth and in fact, is the real reason why this Act, now petitioned against, has been passed. The proprietors are withdrawing the money they have received to invest it elsewhere; their experience of owning property in Prince Edward Island has been too bitter and too dearly purchased, to induce them to risk further there the wreck of their property. To stop this withdrawal of their money is now sought, and it must be admitted that the mode taken is a most injurious one. When the proprietors are brought into court to answer their tenants for disturbing of their holdings under the proceedings soon to be instituted, it will be useless for them to produce the bald, naked award, consisting of twenty-three words, exclusive of the amount, for it raises no presumption that this matter has been determined.

If the proprietors are entitled to protection in the matter of quit rents, and the the legislature of Prince Edward Island have conceded that point, they are also entitled to protection from being twice charged with damages, on account of alleged non-performance of the conditions of the original grant.

But there is another matter which the commissioners are bound to find under section 28, of which, by the amending Act, they are relieved from doing, and, although it does not affect so many of the proprietors, still there are some who will be very seriously injured by its omission from the award. It is the direction to find the arrears of rent.

The commissioners have every power enabling them to do this. They can compel, under section 20, the production of all documents, books, papers, &c., in order to enable them to see how the estate stands.

Where a proprietor has died, the arrears of rent due at the time of his death pass to his executors, the rents, being incident to the reversion, pass with it to the heir-at-law or the devisee.

There is a class of cases of this kind which has been dealt with by the commissioners; under their award a lump sum has been given. Now, when the executor goes into the Supreme Court to ask for his share of the award, due since the arrears due to the deceased proprietor at the time of his death, if the award had set out, as it should have done, the arrears of rent, there would have been no difficulty. But, under the award sought to be confirmed, how can the court tell what amount he is entitled to? It may be assumed that, in any case, something has been deducted from these arrears. How can the Supreme Court tell how much? If it gives the executor more than the commissioners, it must come out of the lump sum awarded, and the proprietor unjustly loses by the amount of such excess. If it gives less than the commissioners, the executor loses the deficiency. I am the administrator *cum testamento annexo* of the estate of the Rev. John McDonald, which, at his death, passed to his nephew the Rev. G. A. S. McDonald. But the arrears due at the time of the first named gentleman's death passed to me, and when collected are to be handed over to Cardinal Manning, in trust for certain charitable purposes in England. I would here quote the words of Judge Peters, one of the judges of the Supreme Court of Prince Edward Island, in giving judgment in Miss Sullivan's case: "There are two lines in the 20th section (of The Land Purchase Act, 1875), which I think have been very much overlooked. They are these: 'and the facts which they may require to ascertain, in order to carry this Act into effect.' The meaning of these I take to be is, facts which it is their duty to ascertain, in order to give full effect to this Act. This goes far beyond what they themselves have to perform. It points to all that has to be done by others to carry out what they have begun. To what the public trustee has to do, and to what this court has to do in making distribution. I see it stated that in one case the arrears are assigned to Cardinal Manning. If the award finds a lump sum, and the Cardinal's claim comes in to participate in the distribution, how could we ascertain how much of the lump sum was awarded in respect of the land, and how much in respect of arrears of rent? We could make no distribution in such a case, and the same thing may happen in other cases where arrears are due to the deceased proprietor, and the present proprietor is not his personal representative, we could be compelled to hold the award void in such a case."

There is, however, another consideration which I venture to press upon your Excellency's consideration, as even a still stronger reason why this Act should not be permitted to go into operation.

It assumes (and assumes correctly enough) that awards made in the general terms, above alluded to, are void. In some instances application has already been made to the court to set them aside. In an application made by myself, as representing Miss Helen McDonald, of Montreal, proceedings have been taken in the Supreme Court to set aside the award, for the very defects which this Act now legalizes. The words of the first section of the Act are so strong that they will have, as they are intended to have, a retroactive aspect, so as to make the proceedings already taken of no effect, nor does it provide that the parties who have taken these proceedings shall be indemnified in their costs.



I beg to direct your Excellency's attention to the opinions of English judges to legislation such as this, as reported in the case of *Moore vs. Durden*, 2 Exchequer Reports, p. 22.

In that case the court refused to follow the rule which requires Acts of parliament to be construed, by giving to its language the interpretation ordinarily attached to it, because its effect would be to make that illegal which, but for such rule, would have been legal. Alderson, B., says :—

“It is contrary to the first principles of justice to punish those who have offended against no law, and surely to take away existing rights, without compensation, is in the nature of punishment.” His lordship further stated that he would not suppose “that the legislature contemplated so gross an act of injustice as, without compensation, to take away an existing right of action, already pending, and that too with no provision even for the costs incurred in the enforcing of what was before a legal right;” but it was added that this was only a rule of construction, and would yield to the intention of the legislature, if sufficiently expressed. There can be but little doubt that, in the Act now under consideration, the legislature has expressed itself in such a manner “that the first principles of justice” have been violated in enacting “so gross an act of injustice as, without compensation, to take away an existing right.” The words of the first section, “no award heretofore made, or hereafter to be made,” will compel the court “to punish those who have offended against no law,” by compelling them to relinquish proceedings in a court of law, which, at the time they instituted them, they had a legal right so to do, and by compelling them to pay the costs for availing themselves of a perfectly legal right. But surely this great wrong, ineffective as it will be for us to argue, should this Act become law, is a strong valid reason why its operation should be stayed, and why the proprietors, whose great misfortune it is to hold lands in Prince Edward Island, should not be still further impressed by so cruel an act of injustice.

Any forbearance, any clemency on the part of the commissioner of public lands, the proprietors have no reason to hope for or to expect; and I would point to your Excellency that section 11 of this Act, now under consideration, arms him with power to seize the lands of an unfortunate lunatic, whose income barely enables him to be supported in the Provincial Asylum at Nova Scotia. When the estate had been taken away, if anything be left him at all, after the Attorney General has procured the confiscation of a large proportion of his award, in the manner I have already pointed out, his fate will, indeed, be a sad one.

This, however, is a matter in which I have not a right to address your Excellency except in the interest of common humanity; but knowing the circumstances, that the son of an English gentleman, now deceased, an unfortunate lunatic in the Nova Scotia asylum, is sought to be deprived of his property, and that sections 11 and 12 of this Act, now under consideration, amount to and are intended as a statutory reversal of the decision of the master of the rolls of Prince Edward Island, in whose charge he is; in the matter of the estate of that very lunatic, I venture to express the hope that your Excellency will cause the decision to be laid before you, before your Excellency will cause the royal assent to be given to so objectionable a measure.

The question whether the “Land Purchase Act, 1875,” is not *ultra vires*, being in excess of the jurisdiction given to the local legislature under the British North America Act, has been raised on behalf of the proprietors, and has been decided adversely to their contention that it is so; such being the case, the measure, as under consideration, is freed from any of those considerations which attach to the giving of the royal assent to those measures over which the Dominion government has jurisdiction.

Before the admission of Prince Edward Island into the Dominion, it was not unusual for those whose rights were attacked by Acts of a nature similar to this, to lay their humble petition at the foot of the throne. Since confederation, they now cannot do it, but in matters such as this, solely under the control of the local legislature.

Your Excellency is regarded as in no ordinary degree the special representative of the Queen's Majesty, clothed with the authority, and we dare not doubt, not indis-

posed to use it to protect those of Her Majesty's subjects, who are conscious of having done no wrong, and who humbly trust that, although they are possessors of landed estate, out of England, your Excellency will not on that account refrain from exercising the royal prerogative, to save them from being the victims of a cruel wrong, by the operation of a harsh, unjust and oppressive measure.

I have, &c.,

EDWARD J. HODGSON.

*Petition of certain Proprietors and Owners of Land in Prince Edward Island.*

*To His Excellency the Right Honourable Sir Frederic Temple, Baronet, Earl of Dufferin, Governor General of Canada, &c., &c., &c.*

The humble petition of the undersigned proprietors and owners of land in Prince Edward Island, respectfully sheweth :—

That an Act was passed at the last session of the general assembly of Prince Edward Island, intituled : "An Act to amend the Land Purchase Act, 1875," which was reserved for the signification of your Excellency's pleasure thereon, and which is of so unusual a nature, and will, if assented to, so prejudicially affect your petitioners that they solicit your Excellency's attention to some of its provisions.

The Land Purchase Act of 1875, in the opinion of your petitioners, affected the rights of private property to an unusual extent, and the Act of last session is an attempt to cure certain omissions and errors committed by the commissioners, appointed under that Act, in proceedings before them which are still pending between the government on the one side and certain proprietors on the other. Although it was notorious, at the time of passing the Act, that these errors would be made the ground of judicial applications to set aside these proceedings, and the awards founded upon them, whenever the government attempted to enforce them. Indeed, at the very time of passing the Act, awards made in the estates of certain proprietors had been declared invalid by the supreme court of the colony, for objections similar to those which the government now attempt, by special legislation, to correct in the case of other proprietors.

By the "Land Purchase Act of 1875," leave is reserved to proprietors to make application to the Supreme Court, within a limited period after the making of awards, to have those awards remitted back to the commissioners for reconsideration. But because certain of your petitioners were advised that the awards made in their cases were illegal and void, they allowed the time granted for applications to remit them back to elapse, relying on their ordinary right to oppose the awards, whenever the government attempted to enforce them : but the government now seek, by retrospective legislation, to remove objections that have been judicially decided to be fatal to the awards, and, by that legislation, make no provision for enabling the proprietors, thus subjected to the consequences of these irregular and erroneous awards, to have them remitted back to the commissioners for amendment or correction.

The "Land Purchase Act of 1875" makes no provision for indemnifying proprietors whose estates are adjudicated on in the commissioners' court, against expenses to their solicitors' counsel, and witnesses, and the second section of the Act of 1875 renders awards legal, without any description of the lands taken from proprietors, but subjects such proprietors to the additional expense of settling the description of such lands by the Supreme Court or a judge thereof, and makes no provision for refunding such proprietors the expense caused by such additional proceeding.

Your petitioners submit that, inasmuch as, by the Land Purchase Act, 1875, proprietors are allowed to retain certain portions of their lands defined by the Act, while the rest is compulsorily taken from them, it is but reasonable and proper that the commissioners should be required to distinguish in their awards the portion of each estate taken from the portion reserved ; and that it is arbitrary and unjust, by retrospective legislation, to subject proprietors to the expense of having the omissions and errors of

the commissioners corrected by additional proceedings before the Supreme Court, without at least providing for the payment of all expenses incident to such supplemental litigation.

The estate of your petitioner, James Frederick Montgomery, was adjudicated on by the commissioners, who made an award in September last, and your petitioner discovered, after the same was made, that one year's rent was omitted by them from the award, under the impression that your petitioner could recover that year's rent, notwithstanding the award; whereas, in fact, it could not be so recovered, because it was overdue in law at the time the award was made, although in fact the custom pursued by your petitioner with his tenants, was not to collect it until the autumn following. Your petitioner, James F. Montgomery, on discovering this omission, applied to the Supreme Court, pursuant to the provisions of the Land Purchase Act, 1875, to have his award remitted back to the commissioners to correct the alleged error, and an order was made in October last remitting back the award to the commissioners for correction. No application was made by the government to have his award remitted back or set aside. He has urged the commissioner of public land, in whose name these proceedings on behalf of the government are conducted, to have the case re-heard, but hitherto, without success. He has also made repeated reasonable offers for the voluntary conveyance of his estate to the government. If he is in order concerning the said year's rent, the amount of the award should stand; on the other hand, if that year's rent has really been omitted, the amount of the award should be increased. But the government, instead of entertaining his offers of a voluntary settlement, or bringing the case to a re-hearing within a reasonable time, now pass an Act affecting him individually, and enabling certain persons therein named to hear and re-hear all the evidence, and to make a new award (see section 4); and by section 7 of the same Act, such new award may give your petitioner a less amount than was awarded by the commissioners, whose award has been so remitted back.

The commissioner on behalf of the local government has made and filed an affidavit against the claim of your petitioner, James F. Montgomery, notwithstanding which the Supreme Court remitted back the award. The present commissioner appointed by the Governor General had not been appointed when your petitioner's case was heard. If the Act of 1876 becomes law, your petitioner will be obliged to go to the expense of having the whole case re-heard, and all his evidence reproduced, for the information of the new commissioner, to avoid the danger of having his award reduced, notwithstanding the fact that the alleged omission for which his award was remitted back, consists of whether said year's rent was omitted. Even if your petitioner is in error in contending that it has been omitted, the fact of his being so mistaken could not lessen the award. No provision is made by either Act, by which your petitioner can recover the expenses of the former or subsequent hearings, and he confidently hopes that your Excellency will not sanction retrospective and personal legislation of this kind, enacted without cause, and the only effect of which would be to harass your petitioners unnecessarily.

Your Excellency will observe that while your petitioner is thus dealt with personally and by name, and put to the annoyance and expense of a general re-hearing, the same Act provides that in all other cases (see section 8) when awards are remitted back, the duty of the commissioners in such case is confined to correct the very error for which such awards are so remitted back.

Your petitioners show that special provision is made by section 11 of the Act for bringing the estate of John Winsloe, a lunatic, within the operations of the Land Purchase Act, 1875, on the ground that doubts have been expressed whether the provisions of the said Act extend to or embrace such a case; what this Act terms a "doubt," your petitioners are informed is really a judicial decision of the Master of the Rolls of this island.

Your petitioners learn that the committee of the said lunatic on being notified by the government under the Land Purchase Act, 1875, petitioned the Master of the Rolls (who has co-ordinate jurisdiction with the Chancellor concerning lunatics and their estates) for the appointment of a commissioner for said lunatic's estate, under the Land Purchase Act, 1875, and the Master of the Rolls gave a written decision or judgment



deciding that the case was not within the provisions of the statute. A copy of that judgment was served by the lunatic's committee or trustee on the commissioner of public lands. The government took no steps to over-rule or appeal from the decision of the Master of the Rolls, but they now adopt the summary method of annulling that decision by an Act of parliament.

Your petitioners also show that certain proprietors have been notified that their estates would be valued, and taken under the provisions of the Land Purchase Act, 1875, that such proprietors appointed commissioners, and were in attendance at the commissioners' court with their witnesses, but the court, in the fall of 1875, suspended its labours, without hearing these cases, and it is now sought (see section 13) to revive proceedings which have abated through the neglect of the government, without indemnifying such proprietors in their former or future costs.

In some instances, when proceedings so abated the then owners or proprietors of land executed conveyances, and made other legitimate dispositions of property, and your petitioners submit that it would be unjust to revive these proceedings by means of an Act of parliament, and have these lands compulsorily assigned to the government without notice to the persons, who, since the abatement of the proceedings, have acquired them by purchase or conveyance.

Your petitioners cannot allow the 17th section of the Act to pass without pointing out the extraordinary and dangerous effect sought to be given to deeds executed by the public trustee. It is well established that the commissioners who appraise estates have no power to adjudicate upon titles. If the commissioners appraise lands in which the proprietor has only a life interest (as in fact they have done), and the public trustee executes a deed of such lands to the government, this section raises a presumption that such deed conveys an estate in fee simple; again, many occupants of lands on estates, hold lands by virtue of many years' occupation, but, if this section becomes law, the deed of the public trustee will be *prima facie* evidence that the grantee named in such deed, and not the occupant of the land is seized in fee simple.

Your petitioners lastly show that many of the proceedings taken in the commissioners' court, and which are pending and undetermined, are manifestly irregular, informal and invalid. And they submit that it is unusual and contrary to the course of British legislation to correct mistakes and remove doubts in contested proceedings by one sided and retrospective legislation in the manner sought to be effected by this Act, and your petitioners pray that in view of the exceptional, novel and dangerous nature of the provisions of the Act in question, your Excellency will be pleased to prevent its becoming law, and your petitioners, as in duty bound, will ever pray.

JAMES F. MONTGOMERY,	REV. JOHN A. S. McDONALD,
JANE B. DOUSE,	by his Attorney.
ARABELLA DOUSE,	ALEX. McLEAN,
JOHN A. McDONELL,	EDWARD J. HODGSON,
J. P. DOUSE,	HELEN JANE McDONALD.
W. C. McDONALD,	

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 21st July, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th July, 1876.

The undersigned has the honour to report, that a despatch from the Lieutenant-Governor of Prince Edward Island of the 12th May last, mentioned, for the consideration of the Governor General, two Acts passed by the legislature of the province, as to one of which, relating to certain departments of the public service, action has already been taken:

As to the other bill so transmitted, it is intituled: "An Act to amend the Land Purchase Act, 1875," and was reserved by the Lieutenant-Governor for the signification of the Governor General's pleasure.

With the despatch of the Lieutenant-Governor is a certified copy of the bill so reserved, and the report of the Attorney General, giving his reasons for the passing of the same by the council and assembly.

The Lieutenant-Governor calls attention to the Attorney General's report, and his reasons therein stated for the passing of the Act, in which he (the Lieutenant-Governor) concurs, and he expresses his hope that it will receive his Excellency's consideration.

The Lieutenant-Governor adds, that as the land commissioners' court stands adjourned until the 1st July next, it is very desirable that he should know his Excellency's pleasure as regards the Act in question previous to that period.

The bill so reserved purports to be an amendment of the Land Purchase Act, 1875, and recites that doubts have arisen as to the meaning and construction of many provisions of the Land Purchase Act, 1875, and that it is highly expedient that all such doubts should be removed.

It then proceeds to enact that no award theretofore made, or thereafter to be made, shall be held void in any court of law or equity, by reason that certain matters which were required by the commissioners to be taken under consideration, are not expressly mentioned in any award, and that no award shall be void for other reasons.

It also provides that nothing shall affect the rights of Miss Sullivan to purchase, whose estate is not pending before the Supreme Court of Canada.

The effect of the first portion of the Act appears to be that the interpretation of the Supreme Court of the Island of the Act of 1875, upon which certain awards of the land commissioners were held bad, is reversed, and the awards in question to be declared as valid.

Against the assent to the Bill, Mr. Edward Hodgson, by letter of the 8th June last, addressed to the Secretary of State, urges that the bill in question very seriously affects the rights and the property of persons holding land in the province. He represents that the Act is for the purpose of giving effect to certain awards, considered to be void by those whose property is dealt with by them, and that the award, similar to those now attempted to be legalized, has been declared to be void by the Supreme court of Prince Edward Island.

Mr. Hodgson further represents that there is another case pending, of Miss H. McDonald of Montreal, and that if the bill be assented to, it will have the effect of declaring the award to be valid, and not only so, but there are no provisions made for indemnifying her in the costs incurred by her in the proceedings she has instituted.

He also represents that further hardships will arise to individuals in case the bill should become law; and he adds, that memorials, explaining the objections in question are being prepared, and requests that consideration of the Act may be delayed for an opportunity of considering the memorials referred to.

In the report of the Attorney General of Prince Edward Island, it is represented that applications to the Supreme Court of the Island, were made on behalf of Miss Sullivan, and of the Hon. Ponsonby Fane, and the court quashed the awards in both cases, but that negotiations for a peaceful settlement of the Fane estate are pending.

The undersigned has the honour, under the circumstances, to report that there does not appear to be any reservation in the Act of the rights of the Hon. Ponsonby Fane, or of any other parties, as to whom awards may have been made, and who are similarly situated with Miss Sullivan and Mr. Fane, and who may have regarded the decisions of the Supreme Court of the Island, in the cases before them, as applicable to themselves.

That by telegraphic communication with the Lieutenant-Governor of the province, it is ascertained that Mr. Fane's case has been settled and withdrawn from the court, and that the only additional case pending before the Supreme Court of the province on the 21st June last, is that of John Allister McDonald, which is not yet tried, but in which a rule *nisi* has been granted by that court to set aside the award, on the 19th of June last, to be tried at the sittings of that court at Charlottetown, on the last Tuesday in June last.

But petitions have been presented at a later date (1) by Mr. Edward J. Hodgson before mentioned, and who describes himself as one of the proprietors of land, and also as counsel for all the English proprietors, and nearly all those resident therein; and (2)

from the following proprietors and owners of land in Prince Edward Island, viz.: James F. Montgomery, Jane B. Douse, Arabella Douse, John A. McDonnell, J. P. Douse, Rev. John A. S. McDonald, by his Attorney Alex. McLean, Edward J. Hodgson, Helen Jane McDonald and W. C. McDonald.

The allegations in the two petitions are substantially the same, and the petitioners pray that the assent of the Governor General in Council be not given to the reserved bill in question.

It is stated :—

1. That it was notorious at the time of passing the bill that the errors (in the Land Purchase Act of 1875) would be made the grounds of judicial applications to set aside the proceedings, and the awards founded upon them, whenever the government attempted to enforce them.

2. That petitioners did not avail themselves within the period fixed by the Act of 1875, for remission back to the commissioners, of awards in their cases, relying on their ordinary right to oppose the awards, of which right the reserved bill would deprive them : which also neglects to provide any means for remission of these irregular and erroneous awards to the commissioners.

3. That the reserved bill puts landowners to additional costs and expenses, but makes no provision for the refund of the same.

4. That the commissioners' awards having neglected to specify the portion of the lands taken from the portion reserved, the owners are by the reserved bill, put to additional costs on proceedings before the court, without provision for payment thereof.

5. A special complaint of petitioner, James F. Montgomery, as to an error in his case, in respect of which he obtained an order of court for remission of the case back to the commissioners ; but the reserved bill provides for a hearing of the case before other commissioners and a new award : and that the provision in respect to other cases than his own is confined as to the point on which such other cases may be referred back.

6. That in the case of one John Winsloe, a lunatic, the reserved bill is practically to set aside a judgment of the Master of the Rolls, deciding that the Land Purchase Act, 1875, did not apply to the estate of the lunatic.

7. That the proprietors, whose claims were to have been heard by the first commissioners, but which were not heard, and the proceedings as to which have abated through the neglect of the government, have no indemnification as to their costs.

8. That the 17th section gives an extraordinary and dangerous effect to deeds executed by the public trustee.

9. That many of the proceedings taken in the commissioners' court, and which are pending and undetermined, are manifestly irregular, informal and invalid ; and that it is contrary to British legislation to remove doubts in contested proceedings by retrospective legislation, as sought to be effected by this Act.

The undersigned has the honour further to report :—

That without giving weight or consideration to any great extent to the allegations in the petitions, which are unsupported by any actual proof, he is of opinion that the reserved bill is retrospective in its effects ; that it deals with rights of parties now in litigation under the Act which it is proposed to amend, or which may yet fairly form the subject of litigation : and that there is an absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of 1875.

He therefore recommends that the bill, intituled : An Act to amend the 'Land Purchase Act, 1875,' do not receive the assent of the Governor General in Council.

R. W. SCOTT,

*Acting Minister of Justice.*



*The Lieutenant-Governor to the Hon. the Secretary of State for Canada.*

GOVERNMENT HOUSE, PRINCE EDWARD ISLAND, 17th October, 1876.

SIR,—I have the honour to transmit herewith, in duplicate, certified and sealed in the usual form, an Act intituled: "An Act to vest a certain portion of Government House Farm in the city of Charlottetown, for certain purposes therein mentioned," passed in the last session of the provincial legislature, together with the late Attorney General's observations explanatory thereof, and reasons assigned by him for its passing, which Act was reserved by me for the especial confirmation of his Excellency the Governor General.

This Act gives to the corporation of the city of Charlottetown a larger area than the Disallowance Act of 1873, and also, in addition, a width of 100 feet, extending along the shore in front of the land it permits to be retained for the use of Government House. With the view of elucidating the matter, I inclose a plan of Government House farm, so called, on which is represented the portion of land taken from it by the Act now transmitted, as well as its relative position to the remainder of the grounds on which Government House is situate; and I likewise transmit a certificate from the surveyor who furnished it, stating the difference between the former and the present Act, as regards the quantity of land described in each. I also forward a certified copy of the grant, adverted to in the late Attorney General's observations, under which the Government House grounds are now held, and to which, apparently, the attention of his Excellency's government had not been called, previously to the making of the Order in Council of the 19th June, 1874, alluded to by the Attorney General.

I think it necessary to remark that the Act now transmitted was not received by me from the late Attorney General until the 9th instant.

I have, etc.,

R. HODGSON,  
*Lieutenant-Governor.*

*Opinion of the Honourable Attorney General Brecken.*

CHARLOTTETOWN, 1st September, 1876.

"An Act to vest a certain portion of Government House Farm in the city of Charlottetown, for certain purposes therein mentioned."

This Act was passed by the legislature of this province for the purpose of vesting in the city of Charlottetown, the lands set forth and described in its 6th section, being part of the Government House farm of this province, to be used and set apart for the purpose of a park and pleasure ground for the use of the inhabitants.

The tract of land now comprising Government House farm was originally part of the common of Charlottetown, which was a portion of land surrounding the city dedicated to the use of the public.

In the year 1789, Edmund Fanning, Esquire, then Lieutenant-Governor of this province, executed under the seal of the province, a grant of that portion of the said common now known as Government House farm, therein described as containing one hundred acres, but now estimated to compose about eighty acres, to Lord Dorchester, the then Governor General of Canada, for the accommodation of the Governor or Lieutenant-Governor, for the time being, of the province.

The citizens of Charlottetown having thus been deprived of the land referred to, and the remainder of the common having since been granted by the Crown to private individuals, the provincial government passed, in the session of 1873, an Act similar in its objects to the one now under consideration, which Act was disallowed by the Imperial government, on account of its having been passed subsequently to the addresses of the

local legislature expressing the desire of the province to enter the Dominion—as set forth in the report of a Committee of the Privy Council of Canada on the 3rd of April, 1874, and the despatch of Earl Carnarvon to Lord Dufferin, dated 28th April, 1874.

After the disallowance of the said Act, namely, on the 19th of June, 1874, an Order in Council was passed by the Dominion government, under the provisions of the 108th section of the British North America Act, 1867, and the 8th section of the 3rd schedule attached thereto, that the Government House in Charlottetown, its grounds and premises, together with the farm thereunto attached and held therewith, should be appropriated to the use of the government and legislature of this province.

The government and legislature deeming the residue of the farm, over and above the portion described in this Act, amply sufficient for the use of the Lieutenant-Governor as a residence, have thought it desirable to declare that the land described in this Act should be appropriated to the purposes for which it was originally set apart.

The part so appropriated is that furthest from the city, and in order that the citizens might have easy access to the contemplated park, the Act provides in its 6th section for the construction of a roadway or carriage-drive along the shore in front of that part of Government House grounds still reserved for a residence for the Lieutenant-Governor.

The peculiar formation and slope of the grounds will enable this roadway to be built without in anyway interfering with the privacy of Government House. Without such a roadway, the only way of access to the park would be by the Brighton road, which runs along the rear of Government House grounds to Brighton shore. The contemplated roadway gives a much easier and shorter mode of access to the citizens, and for other reasons will be a great advantage to the park.

FREDERICK BRECKEN,  
*Attorney General.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 14th November, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th October, 1876.

Upon the statutes of the legislature of Prince Edward Island, passed in 1876, 39 Victoria, the undersigned begs to report as follows:—

Chapters 1, 4, 6 to 8, 11 to 15, 18 to 20, 22 to 25, 28 to 30, do not appear to call for special observation or for the exercise of the power of disallowance.

Chapter 2.—“An Act regulating the sale by License of Spirituous Liquors.”

The first section of this Act requires a certificate from a justice of the peace, with the view to the granting of a license.

The second section provides that any justice of the peace, who shall grant a false certificate shall incur for each offence a penalty of \$50, or one month's imprisonment in default of payment. This would seem to be within the criminal law, and the word “offence” is, for reasons already stated, objectionable.

The Act contains certain provisions restrictive of the sale of intoxicating liquors, referred to in reports on former Acts, but in reference to which no interference is recommended.

In the 7th section the word “offence” is used.

The 16th section provides that no liquors shall be sold or given by any person to any Indian, without a certificate from a clergyman or medical man, under a penalty of \$10 for every offence, one-half of the fine to be paid to the informer, and the other half to the treasurer of the province.

Upon this section the undersigned obtained the views of the Department of the Interior, which points out that the provisions of the section are in direct conflict with those of the Dominion Act passed last session, both as regards the amount and disposition of the penalty imposed, and that it seems clear that local legislation, either in Prince Edward Island or elsewhere, on matters relating to the Indians, can hardly fail to cause

great practical inconvenience and confusion, if not (as in the present case) actual conflict of laws.

Very full provision is made by the Canadian Act, 39th Vic., chapter 18, 1876, respecting Indians, in the 79th and following sections.

It seems obvious that there should not be double legislation upon such a subject.

The undersigned recommends that the attention of the Lieutenant Governor should be called to the objection to this section, with a suggestion that it should be repealed during the next session, and before the time expires during which the Act can be disallowed.

Section 49.—This section provides that every person who obstructs, &c., any constable in the performance of the duties imposed upon him by the Act, shall forfeit for every such offence a sum not less than five, nor more than ten dollars. This seems to come within the criminal law.

By 32 and 36 Vic., chap. 20, resisting, &c., an officer of the peace in the due execution of his duty, is a misdemeanour.

Similar legislation in the case of the province of Quebec, has been, upon two occasions, remarked upon as objectionable.

The attention of the Lieutenant-Governor should be called to this section with a view to its amendment.

Section 52.—This section, which uses the term "offence," provides that it shall be the duty of the grand jury to make diligent inquiry and presentment of all and every such person or persons, as shall be guilty of any breach of, or offence against, the provisions of the Act. Such presentment shall be deemed to be the commencement of a prosecution for the offence therein set forth.

The term "offence," as has been already observed, is objectionable, and still more so when applied to action required to be taken by the grand jury, which is to be the commencement of a prosecution.

The attention of the Lieutenant-Governor should be called to this section, with the view to its amendment, so as to avoid any question of its trenching on the criminal procedure.

Sections 55, 58, 59.—The objectionable words "offence" and "offenders" are used in these sections.

Chapter 9.—"An Act to amend the Insolvent Debtors Act."

This Act repeals the second section of the Act of the legislature of Prince Edward Island, passed in the 14th Vic., chap. 2, and substitutes certain other provisions.

It contains a clause preventing its application to any debtor, against whom proceedings shall be pending, under the Insolvent Act, 1875.

The use of the phrases "insolvent" and "insolvent debtor," is calculated to create embarrassment; the subject of insolvency being within the exclusive jurisdiction of Canada.

In this particular case the law which is amended is, perhaps, not in the proper sense, an insolvent law; it is rather a law which mitigates the hardships of imprisonment for debt, by providing, under certain circumstances, for the discharge from jail of persons imprisoned for debt, but it does not provide for the satisfaction of the debt, or the general administration of the assets of the insolvent, or his general discharge.

Provision for this purpose had been made by the local legislature prior to confederation, by the Act of 1863, 31 Vic., chap. 15, intitled: "An Act for the relief of unfortunate Debtors," amended by the Act of 1869, 32 Vic., chap. 16. Such legislation as is affected by these last mentioned Acts, would of course be, since the union, clearly *ultra vires* of the local legislature.

Legislation somewhat analogous to that now under consideration, has taken place in some of the other provinces, and the statutes have been left to their operation. A similar course is recommended upon the present occasion; but the undersigned suggests that the attention of the Lieutenant-Governor should be called to the expediency of such legislation, as may more accurately describe the object of the law, and remove the objection which exists to the use of the words "insolvent" and "insolvency," as designating its subject-matter.



Chapter 16.—“An Act enabling the stipendiary magistrate of the city of Charlottetown to grant relief to Insolvent Debtors.”

This Act enables the stipendiary magistrate to grant relief to debtors confined within the limits of Queen's county jail, under the provisions of the Act 14 Victoria, chapter 2, referred to in the report on chapter 9, Acts of this session.

To this Act the observations made with reference to chapter 9 are applicable.

Chapter 17.—“An Act relating to Coroners' Inquests.”

Upon this Act the undersigned would refer to the approved report of his predecessor, of the 20th January, 1875, upon the Act of British Columbia, 37 Victoria, No. 4, in which some doubt was expressed whether legislation on the procedure of coroners' inquests might not be a branch of criminal procedure, and as such within the sole legislative competence of Canada. The late minister, however, made no suggestion, and the Act was left to its operation, a course which the undersigned recommends should be followed upon the present occasion.

Chapter 21.—“An Act respecting the town of Summerside.”

In the latter part of the 4th section the words “offence” and “offender” are used to describe cases of breach of provincial laws. It has already been repeatedly observed that it would be better to avoid the use of these words which rather indicate crime.

Chapter 26.—“An Act to incorporate the Acadia Provident Association.”

By this Act certain persons are incorporated, with authority to effect contracts of insurance with any person or corporation on life or lives, &c.

There is no limit to the range of the business; although the institution is to be a mutual one, and from the character of the business it is not likely that it will be more extensive than can be authorized by provincial legislation. It may be as well that some words should be inserted limiting its range, and the undersigned recommends that the attention of the Lieutenant-Governor should be directed to this point.

Chapter 27.—“An Act for the incorporation of the Victoria Boring and Mining Company.”

This Act incorporates certain persons under the given name, and provides that they shall have all the general power and privileges made incident to a corporation by the local Act, 15 Vic., chap. 14, relating to corporate bodies.

The Act in no other way limits the powers of the company, or the places in which its operations are to be carried on.

The Act, 15 Vic., chap. 14, does not contain any general limitation—even the name of the company suggests no limitation. The powers of local legislatures to incorporate companies, are restricted to companies with provincial objects, and it appears to the undersigned that, upon the principle on which several Acts of incorporation have been objected to, this Act is open to objection, and he recommends that the attention of the Lieutenant-Governor should be called to it, with a suggestion that the Act should be amended by limiting the powers of the company to provincial objects during the next session, and before the time arrives within which the question of its disallowance must be determined.

EDWARD BLAKE,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th December, 1876.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd December, 1876.

Upon the reserved bill passed by both houses of the legislature of Prince Edward Island in the session 1876, 39th Victoria, intitled: “An Act to vest a certain portion of Government House Farm, in the City of Charlottetown, for certain purposes therein mentioned,” the undersigned begs to report as follows:—

It appears from the report of the Attorney General that the tract of land now comprising Government House farm was originally part of the common of Charlottetown,

which was a portion of land surrounding the city, dedicated to the use of the public. In the year 1789, the then Lieutenant-Governor executed a grant of that portion of the common now known as the Government House farm, therein described, now estimated to be composed of 80 acres, to Lord Dorchester, then Governor General of Canada, for the accommodation of the Governor or Lieutenant-Governor for the time being, &c.

In 1873, the local legislature passed an Act, appropriating part (though not quite so large a part) of the Government House farm to the purposes to which, by the bill now under consideration, it is proposed to appropriate it. This Act was disallowed by the Imperial government, on account of it having been passed subsequently to the arrangements for confederation, under which the premises and buildings in question became the property of Canada.

On the 19th June, 1874, however, after Confederation was consummated, an Order in Council was made under the provisions of the 108th section of the British North America Act, appropriating to the use of the government and legislature of the province, the Government House in Charlottetown, and its grounds and premises, together with the farm in question.

It appears that the legislature deems the residue of the farm, over and above the portion described in the bill, amply sufficient for the use of the Lieutenant-Governor as a residence.

The remaining area is 35 acres. The sole purpose to which the land taken is to be appropriated is that of a public park, promenade and pleasure ground.

Reference is made in the bill to certain Ordnance lands which are expressly reserved from its operation.

The undersigned has made inquiry of the Department of Militia and Defence, which reports that the reservation is sufficient.

Upon the merits of the bill, the undersigned referred to the Minister of Public Works, who reports that he had previously made inquiry into the subject, and is quite satisfied, from the explanations given to him that no injury would result to the Government House grounds by the proposed alienation; and, further, that he ascertained that the Lieutenant-Governor does not, as the present occupant, see any objection to the bill being passed, and he is therefore of opinion that the bill should be sanctioned. The former Act for the same purpose having been disallowed, it was proper that the Lieutenant-Governor should reserve this Bill; but, under the circumstances shortly stated, the undersigned recommends that his Excellency should be advised that the bill should receive his Excellency's assent.

EDWARD BLAKE,

*Minister of Justice.*

*Order in Council giving assent to Act above mentioned, published in the Canada Gazette on the 16th day of December, 1876, Vol. X., No. 28, page 772.*

## PRINCE EDWARD ISLAND—40TH VICTORIA, 1877.

1ST SESSION, 27TH GENERAL ASSEMBLY.

*His Lordship the Bishop of Charlottetown to His Excellency the Governor General.*

CHARLOTTETOWN, PRINCE EDWARD ISLAND, 12th May, 1877.

MY LORD,—During the session of the legislature of this province, which just closed, an Act dealing with public education has been passed. Against this Act I protested, because of its suppression of French Acadian schools which, I deem, are protected under the 93rd section of the British North America Act. Sir Robert Hodgson, the Lieutenant-Governor, while refraining from the exercise of his power to reserve the Bill from further consideration, assured me that my objections could be urged to, and would be considered by your Excellency.

When I protested against the suppression of the French schools, I had not then seen the whole Act, for it had not been printed. Since then, and within the last few days, I have procured a copy, and, upon giving it an attentive perusal, I find, to my great sorrow, that the Roman Catholics of this province are virtually marked out, by exceptional legislation, for heavy taxation, far over, and above what must fall upon other religious denominations.

My lord, I cannot allow this to pass without an appeal to your Excellency to stay the operation of a measure so harsh and so oppressive. The reasons why your Excellency is confidently appealed to, to protect the Roman Catholics of this province against legislation directed against them, are embodied in memorials to your Excellency. These are being rapidly signed throughout the province, and in a week or two I hope to lay them before your Excellency. In the meantime, I venture to express the hope that your Excellency will delay assenting to this measure until these objections be laid before you, expressing as they do, the deep sense of the wrong attempted to be done to nearly one-half of the population of this island.

I have, etc.,

PETER MCINTYRE,  
*Bishop of Charlottetown.*

*His Lordship the Bishop of Charlottetown to His Excellency the Governor General.*

OTTAWA, 20th June, 1877.

MY LORD,—In addition to the memorials and other documents which I have already had the honour to transmit as well to your Excellency as to the Secretary of State for Canada, I have now the honour to inclose to your Excellency still further evidence showing that the Anglo-Rustico schools of Prince Edward Island, which are to be suppressed by "The Public School Act, 1877," are, and always have been, separate, dissentient and denominational in their character.

I herewith inclose twenty-five certificates signed by the teachers and trustees of the Anglo-Rustico schools, which show very clearly this fact, and earnestly deprecating their suppression.

I also have the honour to inclose a certificate signed by 442 of the inhabitants of Prince Edward Island, in which they bear evidence that these schools have always been considered to be Catholic denominational schools.



I inclose a copy of the 39th section of the 15th Vic., cap. 13 (Local Statutes of Prince Edward Island). It was under this statute that the Anglo-Rustico schools were first recognized by law, and I desire to call your Excellency's attention to the fact that the teacher was not required to pass any examination before the board of education, but instead, was required to produce a certificate from the Catholic priest of his efficiency for teaching, and that it was necessary that such certificate should contain a statement that he was a member of such priest's congregation; protestants were thus absolutely prohibited from teaching those schools. The law was not that the teacher might be, he must be, a Catholic.

The Act of 1868, which consolidated the then existing education laws repealed this section, and substituted the provisions of section 103 in its stead, which enacts that the Anglo-Rustico schools "shall be continued as now in operation."

How these schools were then "in operation" is clearly shown by the inclosed certificates.

The only change made was that the teacher should pass the examination required by the Board of Education.

And now, my Lord, I feel that my task is completed. I have laid before your lordship what I venture to affirm to be evidence unanswerable and overwhelming, that these schools come within the letter and the spirit of the 93rd section of the British North America Act, and I now await the result of your Excellency's decision with an anxiety which I cannot conceal.

The general certificate signed by protestants as well as catholics, is not as numerously signed as it would have been had I had more time at my disposal; but I felt it might be satisfactory to your lordship to have this additional evidence as soon as possible, and I lost not a moment in obtaining it. I left Ottawa on the — inst., and since then I have travelled 2,450 miles: to accomplish this, I travelled day and night, and my anxiety to return to Ottawa in the shortest possible time, gave me but little space to have the certificate more generally attested. Had a longer delay been possible, I could have presented it, with thousands of signatures instead of with hundreds. But I felt that what I had procured, was sufficient to prove the facts that are set forth in it, and I feared laying myself open to any imputation of delaying one single hour what I might sooner place before your Excellency.

When I reached my diocese, I saw all the teachers and masters whom it was possible for me to visit. On Sunday alone I rested, and then only to celebrate and set forth the mysteries of our Ho'y Faith, which are so cruelly attacked by this bill. I only mention this to your Excellency not as claiming any credit for what I have done, I could not do less, I feel, I may truly say, I could not have done more—I have endeavoured to still the agitation of my people. I discountenanced all public meetings. I have sought to quiet their alarm. I hoped, and sought to impress the belief upon them, that your Excellency, as the representative of the Queen's Majesty, would not lend the sanction of our Sovereign's approval, to a legislative enactment against our legally established Catholic schools, in which their children for so many years have been instructed in our Holy Faith.

And now, my lord, I lay these documents, these proofs of our case, before your Excellency, with the earnest hope that your Excellency will be pleased to exercise the full power given to you by the constitution, and disallow this illegal and unconstitutional measure.

I have, &c,

PETER MCINTYRE,  
*Bishop of Charlottetown.*

We, the undersigned inhabitants of the province of Prince Edward Island do hereby certify that the Anglo-Rustico schools, which have been recognized by or established under the Education Act of 1868, or the previous Acts consolidated by that statute, are and always have been considered to be Catholic denominational schools.

The trustees and teachers have always been Catholics, a lesson in the catechism was daily taught, and the books used were Catholic works of devotion and instruction, and were other than those prescribed by the Board of Education.

Some of the undersigned are not Catholics, but they cheerfully bear witness to the matters of fact set forth in the above statement.

PETER McINTYRE,  
*Bishop of Charlottetown.*

DANIEL McDONALD, D.D.  
*Vicar General.*  
And others.

*His Honour the Lieutenant-Governor to the Honourable the Secretary of State.*

GOVERNMENT HOUSE, PRINCE EDWARD ISLAND, 25th June, 1877.

SIR,—At the instance of my government, I have to request that the original petition against the Public Schools Act, 1877, with the signatures appended to it, may be transmitted to me for their inspection, as they entertain grave doubts whether the signatures are those of adult male inhabitants of this province.

My government allege that they are materially strengthened in their doubts, from the facts that no reference was made to the petition in the public press, or any public meetings called upon the subject, whilst the individual members of the government, residing as they do, in different sections of the province, were entirely ignorant of any such petition being circulated for signatures.

Care will be taken that the petition is preserved and returned; should there be any insuperable objection (which my government cannot believe to exist) to the transmission of the original documents, then they desire that a copy of the signatures attached to it may be forwarded.

Under the system established by the Imperial government before confederation, petitions against legislative enactments were required to be transmitted through the Lieutenant-Governor, thus affording the local government the opportunity of forwarding with them such remarks and observations as they might deem advisable—a system which whilst doing ample justice to all, unquestionable prevented much unnecessary delay.

I have, &c.,

R. HODGSON,  
*Lieutenant-Governor.*

*His Honour the Lieutenant-Governor to the Honourable the Secretary of State.*

GOVERNMENT HOUSE, PRINCE EDWARD ISLAND, 5th July, 1877.

SIR,—I have the honour to acknowledge the receipt of your despatch, of the 30th ultimo, calling my attention to the fact, that the information from my Attorney General, referred to in my despatch of the 12th instant, respecting the Public Schools Act, 1877, has not been received, and intimating that a decision upon the matter has been delayed, pending the receipt of further communication, at the request of the Attorney General preferred to the honourable the Minister of Public Works, and stating that "it is therefore expected that no steps will be taken to actively enforce any of the provisions of the Act, which may interfere with the various schools, which the Roman Catholic Bishop of Charlottetown claims to be Roman Catholic denominational schools."

I mailed to you, on the 3rd instant, a minute of my council, in reply to various objections raised by the Bishop and other petitioners, specially relating to the schools

called French Acadian schools, which minute affords the information referred to in my despatch of the 12th instant.

Having called the attention of the leader of my government to your despatch, I have been advised by him that the Act does not require any immediate active steps to be taken by the government with reference to the schools claimed as Roman Catholic denominational schools, unless the people fail to elect trustees, and the chief superintendent is called upon under the Act, to appoint them; but I am assured by him that, in so far as the government, and their officials are concerned, they are quite satisfied that, in accordance with the expectation you express upon this point, no actual interference should take place with these schools, until his Excellency the Governor General has had full opportunity for examining and considering the several documents and statutes forwarded at the instance of my government upon the subject.

I have, &c.,

R. HODGSON,  
*Lieutenant-Governor.*

*His Lordship the Bishop of Charlottetown to His Excellency the Governor General.*

*To His Excellency the Right Honourable the Earl of Dufferin, Governor General of Canada :*

MAY IT PLEASE YOUR EXCELLENCY :—

I beg your Excellency's permission again to refer to the Public Schools Act, 1877, and my many memorials to your Excellency regarding it.

I have laid before your Excellency in Council evidence that the Acadian schools, sought to be destroyed by this statute, are protected by the British North America Act; and this evidence, I venture to say, is unanswerable.

I received from the Minister of Justice an assurance, that although a decision as to whether this measure was constitutional, could not be come to by the first of July, yet, that "a communication had been addressed officially to the Lieutenant-Governor stating that it is expected that no steps will be taken to actively enforce any of the provisions of the bill, which may interfere with the various schools, which you claim to be Roman Catholic denominational schools.

I hope that the expressed wish of the federal government would not have been inoperative, but the executive of the province have refused to comply with the reasonable request of the Minister of Justice, and the consequence is that all the Acadian schools in the province are now closed.

My lord, I think I may with fairness claim that I have waited very patiently. I knew my case was a righteous one, and that the law was on my side, and that, moreover, I had, and still have, as your lordship is not unaware, the open support and expressed sympathy of the whole Episcopate of Canada.

I have hitherto endeavored to quiet the alarm of my people and to still their agitation, for I was slow to believe that a great wrong would be done to the French people of my diocese.

But, my lord, my waiting has been in vain, for I have had no answer to my memorial, and my prayer for justice has been as yet unheeded. Five months have elapsed since I forwarded my first petition, and my earnest hope that the guaranteed rights of my people should not be destroyed, has been long delayed. *Spes quo differtur, effligit animum.*

My duty to my people calls for something more than patient waiting, but before passing to those active measures which, strong in the justice of my cause, and in the moral support of right-thinking people, I feel called upon to adopt. I desire to make one last appeal to that sense of justice, which I am unwilling to believe the federal government will allow to be obscured by considerations of expediency.



The French people of my diocese have been deprived of the religious instruction which they have enjoyed for a quarter of a century, and which is guaranteed to them by the constitution of Canada, and I have hitherto uttered no word of complaint, except what has been submitted to your Excellency through the Ministers of the Crown.

My lord, is it too much to ask that I may be permitted respectfully to request a decision upon this very important matter? I am sure your Excellency would not willingly prolong my great anxiety and the distress of my people. If it were for myself alone, or if private interests only were concerned, I should not press so strongly for a decision, that we may at least know our fate. For I do not conceal from your Excellency that I am most anxious to learn whether the sanction of our Sovereign is to be given to a legislative enactment, directed against the Roman Catholic faith, and whether rights guaranteed by the constitution are taken away, notwithstanding the protest of those to whom those rights are very dear.

I have, &c.,

PETER MCINTYRE,  
*Bishop of Charlottetown.*

*Petition of the Rev. Daniel J. Ellis, P.P., and others, to the Governor General.*

*To His Excellency the Right Honourable Sir Frederick Temple, Earl of Dufferin,  
Governor General of Canada and Vice-Admiral of the same :*

The memorial of the undersigned adult inhabitants of the province of Prince Edward Island, humbly sheweth :

That by an Act passed on the 18th day of April last, called "The Public Schools Act, 1877," provision is made for a system of public education throughout this province.

That your memorialists believe that education should not, and cannot be separated from instruction in the verities of the Christian faith; and so believing they have, throughout the province, at their own expense, built and maintained schools where secular teaching becomes education by being based upon religious instruction.

The Act before alluded to not only ignores these schools, but attempts to legalize a principle so harsh and unjust, that your memorialists earnestly entreat your Excellency to stay its operation.

Your memorialists assure your Excellency that they cannot withdraw their children from the schools, which at so much expense to themselves they have erected, for they are restrained from doing so by the strength of convictions which they cannot overcome. They will, therefore, be compelled to pay for secular schools in addition to those which they feel bound to support.

They believe this to be an act of injustice to them, which a majority possesses the power of imposing upon a minority, and, therefore, while they protest against it, they must submit. But, in addition to this, the statute introduces a new and unheard of principle, for it, in effect, makes it a crime punishable by fine and imprisonment, for your memorialists to send their children to their own schools, rather than to those established under its provisions.

Section 15 provides that unless the average attendance in a school district "shall be fifty per cent of the children of school-age within the school district," that a deduction shall be made from the salary of the teacher.

Section 16 provides that such "deduction shall" be made up by and levied as a rate, upon those parents who, by not sending their children to the schools, have caused the number of scholars to fall below the average required by Section 15.

The effect of these clauses will be this: If your memorialists continue, as they will continue, to send their children to their own schools, and from such attendance the average of children attending the schools established under this Act should fall below

fifty per cent, then, notwithstanding your memorialists have paid their taxes into the public treasury, and that their children are attending efficient schools, built and maintained by themselves, notwithstanding this, they are to be fined because they will not withdraw their children from the religious teaching they prize so highly, to send them where all instruction in the Christian religion is by law carefully and rigorously excluded.

To ignore efficient schools because Christianity is taught in them, your memorialists believe to be a grievous wrong; but to direct special legislation against them, so as to blot them out of existence, is an act of injustice so oppressive, that your memorialists most respectfully appeal to your Excellency, that by exercising the power given you by the constitution, you may protect them against the operation of so unjust a law.

These schools are, as they were intended to be, an evidence of the ardent attachment of your memorialists to their ancient faith, and this statute enacts that they shall not send their children to them, without the poor alternatives of fine or imprisonment.

Against this law and its cruel and unjust enactment, your memorialists appeal to your Excellency. They entreat your Excellency to disallow it—to leave it to its operation would be to give the sanction of Her Majesty's approbation to a legislative enactment, directed against the Roman Catholic faith, by endeavouring to suppress educational establishments which, at great expense and with no little exertion and sacrifice, they have erected and maintained for the education of their children.

And your memorialists as in duty bound will every pray.

DANIEL J. GILLIS, P.P., St. Andrews,  
STEPHEN PHELAN, C.C.

PATRICK WALKER, J.P., M.L.C.,  
JAMES A. E. McDONALD, P.P.,  
And others.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 12th November, 1877.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th November, 1877.

In the last session of the local legislature of Prince Edward Island, an Act was passed intitled: "The Public Schools Act, 1877."

This Act repeals all the previously existing laws on the same subject, and appoints a board of education, composed of a chief superintendent (to be appointed by the Lieutenant-Governor), the members of the executive council, and the principal of the Prince of Wales's College.

This board is given power to establish normal schools, to appoint three inspectors, each county constituting an inspectorial district, to prescribe the qualifications for inspectors and their duties, and to provide for the uniform certification of all candidates for the same, to divide the province into school districts, and to create new districts or alter boundaries, to make regulations for the organization and the government and discipline of schools, for the classification of schools and teachers, and to appoint examiners of teachers, and to grant and cancel licenses, to prescribe text books and apparatus for the use of schools, and books for school libraries.

The chief superintendent is to have, subject to the board of education, the supervision and direction of the inspectors and schools, to enforce the provisions of the Act, and the regulations and decisions of the board of education, to withhold all provincial aid from districts presenting false or insufficient returns, &c., &c.

The duties of the inspector are to visit, at least semi-annually, each school, to examine the schools and school-houses, and to ascertain if the provisions of the school law are there carried out, obeyed, &c., &c.

The Act provides that the support of the schools is to come from local assessment, and from assistance provided by the provincial treasury. The Act also regulates the salaries of teachers according to their respective qualifications, and section 15 enacts

that, "no teacher shall receive from the provincial treasury the salary herein provided according to his respective class or grade, unless the average attendance for the term, during which he claims his salary, shall be at least fifty per cent of the children of school age within the school district, and made so to appear to the chief superintendent's satisfaction; and if such average daily attendance shall be less than fifty per cent, a proportionate deduction shall be made from his salary for any deficiency.

Section 16 enacts, "In case such deduction shall at any time be made from any teacher's salary, for the reason set forth in the preceeding section; the chief superintendent shall cause the fact, and the amount of the deduction, to be certified to the trustees of the district who shall forthwith upon the receipt thereof levy an assessment upon the parties in the district, who have, by neglecting or refusing to send their children to school, caused the deficiency in the average attendance, and such assessment shall be distributed and paid in such proportion and amount, by such persons as the trustees in their absolute discretion may determine, but should it be proven to the satisfaction of the trustees that such a deficiency was caused by sickness or other unavoidable causes, the trustees shall be and they are hereby authorized to levy assessment on the district to meet such deduction in such manner as for other school purposes."

Section 40 enacts as follows:—

All school districts, as registered at the time of the passing thereof, by the board of education, are hereby declared to be established and confirmed as school districts, until altered by the board of education constituted by this Act, and shall have all the rights and benefits of school districts to be established under this Act, notwithstanding any errors, defects or irregularities in the establishing or registration of the same.

By the Act, trustees to be nominated at school meetings, called for the purpose, in each district, on the first Tuesday of July in each year, shall decide what amount shall be raised for the support of teachers to supplement the same provided by the province, and what sum shall be raised for the purchase of school-houses, &c., and for general school provisions.

Three trustees are to be appointed for each district.

Section 69 of the Act regulates the conditions under which the board of trustees shall employ teachers and the time for visiting school.

Section 92 is as follows:—

All schools conducted under the provisions of this Act shall be non-sectarian, and the bible may be read in all such schools, and is hereby authorized, and the teachers are hereby required to open the school, on each school day, with the reading of the sacred scriptures by those children, whose parents or guardians desire it without comment, explanation or remark thereupon by the teacher, but no children shall be required to attend during such reading as aforesaid, unless desired by their parents or guardians.

After the passing of this bill the Right Rev. the Catholic Bishop of Charlottetown, presented to his Honour the Lieutenant-Governor, on the 17th April, 1877, a memorial requesting him to withhold his assent to the said bill, on the ground that it interfered with the rights of the Catholic community of the province, as secured to them by the 93rd section of the British North American Act, 1867.

His Honour the Lieutenant-Governor declined to interfere with the carrying out of the bill, and transmitted this memorial to his Excellency the Governor General of the Dominion.

The grounds of the bishop's objection to the Act are, in substance, that a system of separate schools existed by law at the time of the union of the Island and the Dominion of Canada, and that the right or privilege of the French-speaking portion of the Queen's subjects, in relation to education, were seriously affected; that, by the Act, cap. 6, of 31 Vic., sec. 72, provision is made for the French-speaking population, directing the amount to be paid to teachers of other schools; and that this provision was repealed by the new Act; and that the new bill will have the effect of closing the separate schools, which, for many years, have existed among the French.

His lordship also addressed a memorial to his Excellency the Governor General setting forth that he believed that education should not be separated from instruction in the virtues of the Christian faith: that the Catholics of the province had built and



maintained schools based upon religious instruction ; that the Act alluded to, ignored the existence of the schools ; that the Catholics could not withdraw their children from the schools they had erected at great expense, and would, therefore be compelled to pay for schools, in addition to those which they felt bound to support ; that in addition to this, the statute introduced a new principle, establishing a penalty by fine and imprisonment on such of the Catholics as would send their children to their own schools, specially referring to section 16, above cited, which inflicts a penalty for the non-attendance of children of school-age within the school district, and complained of the loss of these schools and of the penalties inflicted on them, as a consequence of non-attendance at a school established by law, as a grievous wrong and an attack upon their faith ; and asked for the interference of the Governor General.

The Attorney General of the province forwarded a representation in support of the Act, and, in answer to the allegations of the Bishop of Charlottetown, in which he stated, in substance, that the system of education has always been, according to the law of the province, non-sectarian, that at one time small grants were voted annually towards several sectarian schools, but that, for years before confederation, they had been withdrawn, and that this non-sectarian character has been continued by the present Act, which repealed the law of 1868.

In answer to Bishop McIntyre, the Attorney General states that he does not see that provision was made by the Act of 1868, for schools for the French speaking portion of the population, and that section 72 of that Act does not bear this interpretation ; that this section has been taken advantage of to a very limited extent throughout the province, and he denies that these schools have the character of separate schools, in any way different from the schools established by the last Act. He contends at the same time, that these schools may continue under the provisions of this statute as formerly ; that the provisions of the former Act did, in no way, directly or indirectly, sanction any school as a separate school, in the sense in which religious views or tenets could legally be taught or books used, other than those authorized by the board of education ; that the French population had no right or privilege which the new Act prejudicially affects.

The Attorney General relies on the decision of the Privy Council, *in ex parte Renaud*, to show that there is no moral or legal right in the claim of the Bishop, and denies that the Roman Catholics of the province are marked out by exceptional legislation for taxation, over and above what must fall upon other religious denominations.

He incloses copies of the authorized list of school books, the only one which could be legally used in a public school up to this time, admitting, however, that the law, in this latter respect, had not, of late years, been in any way strictly adhered to or enforced.

The Executive Council further submitted, in support of the Act, a memorandum, in which they make observations upon the statements contained in the petitions and memorials, transmitted by his lordship the Bishop of Charlottetown. They deny that there ever existed separate denominational schools.

That their existence was never asserted in the press or in the legislation, as being supported at the public expense.

That no such schools actually exist, or have existed for many years. They admit that in the French schools, as well as in the Scotch and Irish schools, books have been used which were not authorized by the regulations of the board of education, but they contend that there existed no legal authority for the use of these books, and that their use was improper and illegal ; that the fundamental principle of their school was exclusively non-sectarian.

The memorial further states that the bill was discussed at length in the legislature, without any haste in its passing, and that no protest or petition was ever presented and that during the length of debate which took place with respect to this bill, not a hint was given of the existence of these separate denominational schools.

The council observe that the Catholic Bishop in his petition assumes that the rights he claims are based solely upon the 72nd section of the Act of 1868, which, they say, has been fully answered by the Attorney General in his report. The council, in answer to the complaint made by the bishop as to sections 15 and 16 of the Act, claim the right of the legislature to enact such provisions, as will secure the attendance of

children at school, and are necessary for the proper securing of the objects of the Act, and to levy the difference of amount which otherwise would have been obtained to pay teachers' salaries.

In order to disclaim any intention of attacking the Roman Catholic section of the community, the memorial relies on subsection *m* of section 93, which, they say, is expressly enacted to meet the cases where any denominations of Christians, Roman Catholic or Protestants have erected a school of their own, and to enable such school to participate in the public expenditure, provided it conforms in all respects to the public schools rules and regulations during school hours.

The memorial denies, absolutely, the allegations contained in the petition of the Bishop and of the Catholics, that there exists any class of denominational schools recognized by law, known as the Anglo-Rustico schools, and that if they ever existed it was in defiance of the law and without the knowledge of the government, admitting, however, that the law, with respect to the books used in some of the schools attended by children of one denomination, had been to a limited extent evaded.

The council, in its memorial, allege that in the year 1875 a monster petition was presented to the legislature of the province, signed by Bishop McIntyre and about nine thousand Roman Catholics, in which they prayed the legislature to concede the very privileges they now boldly assert they, at the time, and for years before, had legally possessed.

A copy of this petition is forwarded with the memorial, showing, as they contend, that the Catholics could not have supposed the existence of the rights they now profess to have.

They also refer to a parliamentary committee of the session of 1876, appointed to investigate into the educational law, who by its report, showed that the law with respect to books, had not been complied with in the French Acadian schools, but without any affirmation of any legal rights as those claimed by the Bishop.

To the argument used by the Bishop, based upon the 39th section of the 15th Vic., chap. 13, that the Anglo-Rustico schools were first recognized and had certain rights guaranteed to them, which were recognized at the time of the passing of the Act of 1868 (31 Vic., chap. 6), and sanctioned and legalized by the 103rd and 104th sections of that Act, the Council contend that those sections cannot bear such construction.

That there exist no schools in the province known as the "Anglo-Rustico schools," or so called in any of the Acts.

That the school districts are registered by some particular name, one only of which is called and registered as the "Anglo-Rustico District," where the population are partly Acadian French and partly English. That these districts being very populous and one school being found insufficient, the legislature, in 1864, by the 37th Vic., chap. 31, authorized the board of education to establish two schools in that district.

That the statute required that the teacher should be a duly licensed district school teacher, and that both he and the trustees of the school should comply with all the provisions of the law relating to education.

That the 7th section of this statute authorized the board to apply the same remedy to other districts, found similarly circumstanced with the Anglo-Rustico district, in imposing the same condition to their establishment.

Such, according to the memorandum, were the only reasons for establishing these schools in the Anglo-Rustico district, which were always subject to the law, both as to licensed teachers and otherwise.

That the 103rd section of the Act of 1868 was intended to continue and confirm that state of things, and the 104th section to allow the same remedy to districts similarly circumstanced. That these sections 103 and 104, of the Act of 1868, are merely transcripts of sections 6 and 7 of the Act of 1864, which was repealed by the Act of 1868.

That such schools had no legal privilege with regard to the books, teaching or system of education different from the other schools :

That one of the provisions of the Act of 1868, relating to district teachers, is that the books prescribed by the board of education shall be used, and that any school where

the books, regulations and system of education prescribed by the school visitor shall not be used, shall be deprived of its allowance.

Referring to section 101, it is contended that no teacher can receive any pay, until he produces certificates that the provisions of the Act are, in all respects, being complied with. The regulations sanctioned by the board comprise the following: "No books of any kind shall be used in the school, except those approved of by the board of education from time to time."

It is further alleged that no teacher has ever attempted, under this Act, to claim his salary, without producing the necessary certificates from the trustees of the district, that he has, in all respects, complied with the law. The secretary of the board of education certifies that no other school was ever established of this character since the passing of the Act of 1868.

With reference to the schools of the Anglo-Rustico district, which were in operation at the time the Act was passed, the council state that they had not the character ascribed to them by the bishop.

The memorial affirms that they were not, at that date, in the same condition as in 1852, but that they had been by express legislation swept away.

The Act of 1852, in its 39th section, recognized the French Acadian schools in this respect only:—That if a French Acadian teacher producing a certificate from the priest that he was a member of his congregation, and was capable of teaching certain branches, do receive a certain salary, but did not sanction the use of any of the prescribed books.

On the contrary, the 51st section of that Act directed that the board may withhold the allowance from any school not observing the books, regulations and system of education prescribed by it.

In 1854 the education law was amended, and, by the 29th and 30th sections, the French Acadian teachers had their salaries raised £5 a year, and were obliged to open English classes for instruction in "reading, writing and arithmetic," failing which they were to be deprived of their allowance.

Next came a regulation of the board of education, passed in 1857, proscribing all books but those authorized by the board, which regulation has, ever since, remained in force. In 1860 the law was again amended, and the third section placed Acadian teachers who passed the board of education examination and received a certificate, and complied with the requirements of the law, on the same footing as other teachers. The 4th section of the same Act provided that those Acadian teachers who refused to be re-examined, should have their salaries reduced to £35 per annum.

The 10th section of the same Act fixed the number forty, as the total requisite number for each Acadian school, and if the average daily attendance did not amount to eighteen, a deduction should be made from the teacher's salary.

In 1861 the educational laws were consolidated, all previous Acts being repealed.

The clauses of previous statutes relating to Acadian teachers were re-enacted.

Those Acadian teachers who passed the board's examination were put on the same footing as all other teachers, and those who could not pass the board were to receive a reduced salary. (See sections 29, 31 and 32 of 24 Vic., cap. 36.)

The 37th section of the same Act authorizes the board to withhold allowance from any school in which the books, regulations and system of education prescribed by the board were not used and observed. (See sec. 31 of 24th Vic., cap. 36.) In 1863 the law was again amended by 26th Vic., cap. 5, the 31st and other sections of the Act of 1861, recognizing the Acadian teachers as a distinct class, were repealed; and by the 6th section of the Act of 1863 the legislature declared that it was inexpedient to grant the government support any longer to Acadian teachers as such, abolished them as a separate class, and any special privilege they may have enjoyed.

The sections of the Act of 1861, conferring privileges upon them, were repealed, and since that time the memorandum contends that the Acadian teachers, Acadian schools, as distinct from the ordinary schools, ceased to exist, and if mention is made in the Act of 1868 of the Anglo-Rustico schools, the only reason was that one school was frequented by the English-speaking people, and the other by the French. The only power which was left to the priest or clergyman, after the passing of the Act of 1868,



was that of visitor, enjoyed by clergymen of all denominations, also by judges, magistrates and members of the legislature, under section 53 of the Act of 1868. In conclusion the memorandum refers to the decision of the Privy Council *ex parte* Renaud, as confirming their position.

The above memorandum was communicated to the bishop for his observation, and in answer he states: That he sees in the minute of council only three points:

1. That the claim about the Acadian schools is a new one, for it was not made in the legislature, nor in the press, nor in his memorial of the 17th April, 1877, to Sir R. Hodgson, nor in the Catholic petition of 1875.

2. That clauses 15 and 16, of the Public School Act, 1877, are not unfair and oppressive.

3. That there are no Acadian separate schools recognized by law.

For the answer to the last three points, he refers to the report of his solicitor, which he appends, and on the first, in substance, he re-affirms the existence of these schools as being known to the whole community, and of the Executive Council, which fact he supports by reference to the debates at the time of the passing of the bill.

His lordship explains the absence, in his petition, to the Lieutenant-Governor, of the 17th April, 1877, of the grounds taken by him in his subsequent petition and memorial. His reasons are, that the bill was being passed through hurriedly, and he had but a short time to prepare his objections.

That he was denied a copy of the bill after repeated attempts to obtain one. On the fact alleged by the memorandum that the petition presented by him and his people, to the number of nine thousand, did not mention the existence of this new clause regarding the rights of Catholics, his lordship states that he had no reason to mention this, because it was then a well-known fact, and he asked, by his petition, to have a general system of education of sectarian principles, and that there was no necessity for calling the attention of the legislature to the then existing Anglo-Rustico school.

In order to render any law of the provincial legislature inoperative under this section, it is requisite that there should, in such province, have been, at the union, denominational schools, with respect to which, certain classes of persons had rights or privileges, and that those privileges should have been served by law.

To determine this question it is necessary, at once, to consider what law was in force at the time of the union of Prince Edward Island, for the purpose of determining whether, within the meaning of the subsection 304 of section 93, of the British North America Act, the French, or Roman Catholics of Prince Edward Island had, by such law, any right or privilege with respect to such denominational schools, and whether the last act prejudicially affects such rights and privileges.

By the law of Prince Edward Island before the union, in 1868, a new system of education had been introduced, and all anterior statutes were repealed. A board of education, composed of eleven persons, was appointed, and no schoolmaster or mistress was authorized to teach unless he or she received a license from the board, after examination.

Visitors were appointed for defined districts, and a board of five trustees for each district was to be selected by the inhabitants of such district.

The law conferred on these trustees the power to assess householders, being parents or guardians of children, or for the building or repairing of houses.

Section 72, upon which his lordship the Bishop of Charlottetown relies in support of his contention, provided that a teacher who could teach French should receive £5 additional salary, provided the trustees of such school district raised that sum for such teacher by supplementary subscription. All school districts, as then registered by the board of education, previous to the passing of the Act, were established and confirmed as school districts, and entitled to all the rights and benefits conferred by the Act, notwithstanding any want of former irregularity whatsoever in the mode of establishing such district, or in any other proceeding. Every school teacher was required to transmit to the secretary of the board of education, a notice, stating the date at which he entered into his engagement, and the day of the opening of the school under his charge. The two most important clauses of this Act bearing upon the

question, and insisted upon as creating or recognizing separate denominational schools, are sections 103 and 104, which are as follows: The two schools which were established, and are now in operation, in the Anglo-Rustico district, on township number twenty-four, in this island (one school having been found insufficient to afford the means of education to all the children therein), shall be continued as now in operation, and the board of education are hereby authorized to divide and alter the said district, in such way and manner as they may deem expedient so as to meet the exigency of the case, anything herein contained to the contrary notwithstanding; provided always that no teacher appointed to take charge of any such school or schools in the said Anglo-Rustico district shall at any time be recognized as a district teacher, or be entitled to a salary, unless such person shall have obtained a license as a first or second-class teacher from the board of education, and shall comply with the provisions of this Act relating to district teachers.

In case any other established school district in this island shall be found similarly circumstanced with the said district hereinbefore designated, the Anglo-Rustico district, it shall be in the power of the board of education to apply the same remedy in relation thereto, by dividing or altering the same, and establishing an additional one therein, as is mentioned and set forth in the last preceding section, in regard to the said Anglo-Rustico district, and with the like restrictions in all respects as therein prescribed, in regard to the teacher of any such additional school, being a duly licensed teacher, and the teacher of his school shall conform in all respects to the provisions of this Act.

The grounds urged by the bishop for the disallowance of this Act, amount to the proposition that the sections 103 and 104 recognize and allow the existence of schools under the name of Anglo-Rustico district schools, which were denominational by toleration and usage.

Upon a close examination of the sections referred to, it is impossible to arrive at the conclusion that these schools were denominational by law.

Whatever may have been the course of instruction carried on in them, I find no provision in the law, which could be interpreted as warranting the exemption of these schools from the enactments applying to the schools generally.

It must be observed that all previous laws were abolished by the statute of 1868; that the only provision which can be invoked in support of the proposition that the Anglo-Rustico schools were denominational is that these sections, 103 and 104, mention them and allow them to be continued as thus in operation: but the reason mentioned for their continuance, is not that they offered a different system of education, but because one school was found insufficient to afford the means of education, the law having established only one school for each district, and this exception being made to apply merely to a certain territorial division, the board of education being authorized to divide and alter the district so as to meet the exigency of the case. I find it impossible to discover in these two clauses anything which could justify the claim of the bishop to secure the right to denominational teaching in such schools, as the section itself declares that no teacher shall take charge of any such school in the Anglo-Rustico district, and be recognized as a district teacher, or entitled to a salary, unless he shall have obtained a license from the Board of Education, and shall comply with the provisions of the Act relating to district teachers.

Consequently, if such teacher is subject to all the regulations imposed by the law upon other teachers, I cannot see how they can assert their independence of the general provisions of the statute. The latter portion of section 104 seems to repel the possibility of any such interpretation as suggested by the bishop. When allowing trustees to establish other schools than those generally created by the statute in one district, it preserves the same restrictions in regard to the teaching of such additional schools, and binds the trustees to conform in all respects to the provisions of the Act. It therefore follows that even in the Anglo-Rustico district, the teachers were found to obtain their license, and to comply with the provisions of the Act. The trustees of such schools were also bound in all respect to conform to the law. The only reasons brought by the bishop's solicitor are, firstly, the fact that a different course of instruction was followed in these French schools, and, secondly, that the board of education and the public

generally, were aware of and sanctioned the system, which was carried on independently of the provisions of the statute.

This does not amount to a legal recognition of the existence of these schools. The laws having been passed in 1868, the time during which such a system was admitted or supposed to have been admitted, cannot amount to a usage, having the legal effect of repealing a positive statute. In other words the learned gentleman pretends that, because the law was suspended in some instances by trustees, who were appointed and bound to see its execution, this would be equivalent to a special provision in the statute allowing the system of such schools, or a repeal of any provisions which would prohibit the establishing of separate or independent schools: such a proposition cannot be admitted as founded in law.

Taking for granted, even, the proposition of the bishop, that these schools were denominational in their teaching and in the course of education followed therein, tacit sanction of the trustees and board of education since the passing of the statute of 1868; this fact alone would not support the pretension that the last Act should be disallowed. It would only establish at most the fact that, notwithstanding the positive enactments of the statute establishing a uniform system of education, non-denominational in its character, a different system was tolerated.

The provision of the constitutional Acts, which secures to any province a system of separate or dissentient schools, requires, as a condition of interference by the federal authority to maintain that privilege, that these schools should be separate or dissentient in their nature by virtue of the law existing at the date, which the province joined the union. It is not contended that there was any provision in any of the previous Acts of the legislature of Prince Edward Island, which secured to any sect, the right of establishing an independent school. The bishop himself does not allege in his memorandum that such a provision existed in any of the statutes. The reasoning of the argument of his solicitor would therefore be that, although there was not in existence any statutory provision, empowering the Catholic community to establish and maintain separate schools, and notwithstanding that there was in existence express statutory provision to the contrary, they could, because such schools had been virtually in operation, call on the federal government to prevent the legislature from establishing any regulation with respect to the schools generally, without securing to them the right of maintaining separate and denominational schools. Nothing can be found in the statutes that justifies such a proposition. Reference has been made by the bishop to the law existing previous to 1868, in Prince Edward Island. The last statute on the subject previous to 1868 was chapter 36, of 24th Victoria, 1861. There also, all provisions inconsistent with the enactment, were abolished. A board of education was constituted to regulate the admission of teachers, and the practice and system of education to be observed. This statute required also that every school teacher, whether Acadian or otherwise, should pass an examination by the board of education and receive a certificate of qualification. An exception, however, was made by the 31st section, allowing the admission of Acadian teachers who had not been examined, to receive a reduced salary of £35, if he produced a certificate, signed by the priest or clergyman of the district or parish wherein he taught, to the effect that he was capable of teaching, and that he had taught the number of scholars required, and had instructed one English class for three months, previous to the granting of such certificate.

Section 37 of the same Act, however, declares that all schools claiming allowance to teachers under the Act, wherein the books, regulations and system of education prescribed or to be prescribed by the school visitor and board of education to be observed, are not observed or adopted, shall, if the board think fit, and make an order to that effect, be refused or deprived of such allowance, until such time as such books, regulations and system of education shall be observed and adopted.

The preamble to this Act states that the laws now in force establishing a *system of free education* in the island, require consolidation and amendment. Thus, so far back as 1861, the law did not recognize any system of separate and denominational schools. It is useless to go beyond that date; and it is impossible for the bishop to find in any of the Acts from that date, any provision from which could be inferred the right of any



denomination to establish a separate or denominational school not under control of the board of education. Great stress has been laid on section 15, as imposing an unjust tax upon the parents neglecting or refusing to send their children to the district school, thereby causing a deficiency in the average attendance, and leaving absolutely to the discretion of the trustees, to determine the amount, and to levy an assessment on the parties. This provision I consider to be severe, and giving somewhat arbitrary power to trustees, in fixing the penalty and in the selection of the offenders. It confers the power of levying an additional tax at the discretion of the trustees. The previous laws gave the right to the trustees to levy the amount of the deficiency *on the district*, which necessarily comprised those who complied with, and those who refused to submit to the law. If we are bound to consider that the right of regulating education as absolutely appertaining to each province, except where the privilege of establishing separate schools existed by law, it must be admitted that they have equally the right to attach to the provisions of such law, the conditions and penalties required to secure its object; and however arbitrary or unjust the mode of enforcing it may appear, it would not seem proper for the federal authority to attempt to interfere with the details, or the accessories of a measure of the local legislature, the principles and objects of which are entirely within their province.

Inasmuch, however, as the provisions first referred to, which enable the trustees to levy the tax at their discretion, seem to depart in a measure from the well established principle that taxation should be *certain*, and so far as possible equally distributed, I recommend that the attention of the Lieutenant-Governor be called to such provisions, with a suggestion that they should be amended to meet the objections mentioned; but for the reasons above set out, I recommend that the Act itself be left to its operation.

R. LAFLAMME,

*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 4th May, 1878.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd May, 1878.

I beg to report upon the statutes passed by the legislature of the province of Prince Edward Island, during the session held in the year 1877, received by the Secretary of State on the 7th day of June, 1877, as follows:—

Chap. 1. "The Public Schools Act, 1877."

This Act has already been reported upon by the Minister of Justice, and has been left to its operation.

To the Acts, chapters 2 to 13 inclusive, there appears to be no objection, and I recommend that they be left to their operation.

Cap. 14. "An Act to amend an Act to incorporate the Town of Charlottetown."

The fifth section of this Act provides that on the last Tuesday of every month, the clerks of the stipendiary magistrates' court shall account for, and pay into the hands of the city treasurer, all fines or fees collected or received by him.

In reporting upon the statutes of the province of British Columbia, in the month of September last, I had occasion to consider the right of the provincial legislature, to legislate in respect of the disposition of fines arising under the criminal law. The conclusion arrived at by that report, which was approved of by Order in Council, was, that such fines belonged to the Dominion government.

The section under consideration, therefore, so far as it relates to fines arising out of the criminal law, is beyond the power of the local legislature.

The parliament of Canada by the statute of 40th Vic., cap. 4, extended to the province of Prince Edward Island, certain criminal laws, now in force in other provinces of Canada. Section eight expressly enacted that, "Fines collected under the Act respecting the trial and punishment of juvenile offenders, shall be paid over to the provincial secretary and treasurer."

This Act is in direct conflict, so far as the fines mentioned therein are concerned, with the provisions of the section now under consideration.

I recommend that the Lieutenant-Governor's attention be called to the matter, with the request that he will bring it immediately to the notice of his government, and before the time for disallowance of the Act arrives, to communicate their reply, an intimation being at the same time given to him that, unless at the next session of the local legislature, his government will promote the necessary legislation to repeal the section, or to confine it to such fines as may arise through breach of any of the provincial laws, in respect of the matters coming within the exclusive legislative control of the provincial legislatures, the Act will be disallowed.

A petition from the mayor, certain common councillors and inhabitants of Charlottetown, has been received, praying that this Act, now under consideration may be disallowed, upon the ground that the Act exempts from assessment, persons paying rent less than \$30 per year, and that this is an interference with the rights of the creditors of the city, who lent the city money, at a time when each citizen who paid a rental of \$16 per annum was liable to be taxed; also, upon the ground that, by the 3rd section of the Act, the control and management of the police force of the city, are taken from the mayor and council, and the power of their dismissal given to the stipendiary magistrate, but the power of appointing is continued in the mayor and council. The petition contends that it is improper and unjust to deprive the mayor and council, of the control and management of the police force, and to have the power of appointing in one body, and the power of dismissal in another, also upon the ground that the stipendiary magistrate is allowed by this Act to appoint a clerk for his court at a salary of \$500 per annum; that this clerk is superfluous, and the city unnecessarily burdened with his salary.

I do not propose to discuss the expediency of the enactments referred to. The subject matter appears to be entirely within the legislative authority of the local legislature, and I think the power of disallowance should not be exercised, for any of the reasons mentioned in the petition.

Objection is taken in the petition to the provisions of the ninth section, which transfers to a licensing board, the power previously vested in the city council respecting the granting of licenses for the sale of spirituous liquors, and which gives the board power to provide for the inspection of liquors, and the testing and analysis thereof.

It is contended that this provision is beyond the competency of the local legislature, or is unnecessary, as the subject has already been legislated upon by the parliament of the Dominion (Statutes of Canada of 1874, p. 43.) The section, however, appears to me unobjectionable from a constitutional point of view,

I cannot say that it is beyond the powers of a local legislature to provide merely for the inspection of liquors and the testing and analysis thereof. No provision is made as to the action to be taken upon such inspection or testing and analysis being made.

As the section at present stands, the board are simply given power to provide for the inspection, and testing and analysis.

This, standing by itself, appears to me to be unobjectionable.

This Act is also objected to upon the ground that this section takes from the city council, the control over that part of their revenue derived from licenses for the sale of liquors, and that hereby the security of the creditors of the corporation is interfered with.

The matter, however, is one coming within the authority of the local legislature, and it would not be proper in such a matter, and for the reason given, to exercise the power of disallowance.

Objection is also taken to the 21st section, which provides that "the licensing board shall first determine on any application whether or not a license should be granted, and their decision shall be final," and it is contended that the licensing board may thus wholly and absolutely forbid the sale of any liquor by license.

Much can be said in favour of this contention, and that the section is, therefore *ultra vires*, as interfering with the requirements of trade and commerce.

Similar legislation, however, has been left to its operation in other provinces, and I do not recommend the disallowance of the act on account of this section.

Chap. 16.—“An Act to alter and amend the Act to incorporate the minister and trustees of St. James's Church, Charlottetown.”

The 5th section of this Act give the corporation power to raise money, by making and issuing bonds payable in a certain period, with interest not exceeding six per cent per annum; and the 8th section declares, that if the interest or principal money of any of said bonds should not be paid on demand, with such interest or principal respectively as demanded and overdue, shall bear interest, after such demand, at the rate of six per cent per annum until paid.

This provision seems to entrench upon the subject of interest, which, by the provision of the British North America Act, comes within the exclusive legislative authority of the parliament of Canada.

I recommend that the attention of the Lieutenant-Governor be called to it.

To the Acts chapters 17, 18 and 19, there appears to be no objection, and I recommend that they be left to their operation.

Chap. 20.—“The Registration of Electors and Ballot Act of Prince Edward Island, 1877.”

Section 101 provides that whoever, at any time before, during, or after the following, shall—

“7. Forge or counterfeit, or fraudently alter, deface, or destroy any ballot paper or the initials of the sheriff or presiding officer signed thereon.”

This provision clearly entrenches upon the criminal law, so far as it relates to the counterfeiting or fraudulently altering any ballot paper, or the initials of the sheriff or presiding officer.

I recommend that the attention of the Lieutenant-Governor be called to this provision with a request that legislation may be promoted for its repeal, or an amendment so as to obviate the objection referred to.

I concur.

R. LAFLAMME,  
*Minister of Justice.*

Z. A. LASH,  
*Deputy Minister of Justice.*



## PRINCE EDWARD ISLAND,—41ST VICTORIA, 1878.

2ND SESSION—27TH GENERAL ASSEMBLY.

*His Honour the Lieutenant-Governor to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, PRINCE EDWARD ISLAND, 11th July, 1878.

SIR,—I have the honour to transmit herewith, in triplicate, duly sealed and certified, an Act intituled: "An Act to repeal certain Acts relating to the Church of England in this province, and to make provisions in lieu thereof," passed by the legislature of this province in the late session of the general assembly.

Amongst the Acts repealed by this Act, is a permanent one passed in the year 1802, which declares the Liturgy of the church, established by the laws of England, shall be deemed the fixed form of worship in this island, the Act transmitted therefore disestablishes the Church of England in this province, and consequently interferes with the prerogative of the sovereign as the temporal head of the church, and it has no suspending clause. Under these circumstances I reserved the Act in question, which was not introduced by the local government, for the signification of his Excellency the Governor General's pleasure thereon.

I have, &amp;c.,

R. HODGSON,  
*Lieutenant-Governor.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 14th April, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th April, 1879.

I have the honour to report:—That a bill was passed by the legislature of the province of Prince Edward Island in the year 1878, intituled: "An Act to repeal certain Acts relating to the Church of England in this province and to make provision in lieu thereof."

This bill was reserved by his Honour the Lieutenant-Governor, for the signification of the pleasure of his Excellency the Governor General thereon.

Having perused the same, it appears to me that the bill, might well have been assented to by the Lieutenant-Governor, as its provisions seem to be purely of a provincial character, and unobjectionable in a constitutional point of view.

The Lieutenant-Governor, in transmitting the bill, does not give his reasons for reserving it, and the only reason which I can suggest is, that it repeals an Act passed in the forty-third year of the reign of the late King George III., chap. 6, intituled: "An Act for the better and more effectual establishment of the Church of England in the Island."

The Lieutenant-Governor may have thought that it was an interference with Her Majesty's prerogative, and not within the legislative control of the provincial assembly, to disestablish the Church of England in the province. Except for this there would be no reason whatever for reserving the bill, and I would have recommended that the course usually adopted with reference to local bills, reserved for the signification of the Governor General's pleasure thereon, which should not have been reserved, should be followed in this case, namely, that no action should be taken thereon.

But it is as well that no doubt should exist upon the matter, I think in this instance it would not be improper to recommend that the bill be assented to. I there-

fore recommend that the assent of his Excellency the Governor General be given to the bill.

I recommend further that the Lieutenant-Governor be informed that, for the reason above mentioned, this case is looked upon as an exceptional one, and that it must not be regarded as a precedent with respect to other bills, entirely within the legislative authority of the provincial legislature, and in which no Dominion or Imperial interests are involved.

JAS. McDONALD,  
*Minister of Justice.*

*Order in Council giving assent to the Act above mentioned, published in the Canada Gazette on the 19th day of April, 1879. Vol. XII, No. 12, page 1296.*

*His Honour Lieutenant-Governor Hodgson to the Honourable the Secretary of State.*

GOVERNMENT HOUSE, PRINCE EDWARD ISLAND, 29th April, 1879.

SIR,—I have the honour to acknowledge the receipt of your despatch of the 17th instant, forwarding a copy of an order of his Excellency the Governor General in Council, and of the report of the Honourable the Minister of Justice therein referred to, on the subject of a bill passed by the legislature of this province in the year 1878, intituled: "An Act to repeal certain Acts relating to the Church of England, and to make provisions in lieu thereof," reserved by me for the signification of His Excellency's pleasure thereon: and also the receipt of your despatch of the 19th instant, transmitting an order of his Excellency the Governor General in Council, signifying his Excellency's pleasure that the said bill be left to its operation, and stating that the Order in Council had been published in the *Canada Gazette* of that date.

All these documents were handed to the Attorney General, and directions given to him to prepare the necessary messages to the provincial legislature, of proclamation required under such circumstances by the British North America Act.

That officer informs me that, in his opinion, I am precluded by the terms of that Act from announcing the assent of the Governor General to the bill in question, in consequence of notice of his Excellency's assent not having been received within the year of its presentation to me for my assent, and that, therefore, the bill cannot have any force or effect.

I inclose you the Attorney General's opinion on this subject.

If the Attorney General is correct in his construction of the Act, in point of fact, it will only occasion a little delay, without injury to any party; the bill can be re-enacted at once, there will be no opposition, and, his Excellency's opinion having been pronounced, it can be assented to immediately after passing.

I shall be glad to be instructed as to my proper course of proceeding in this matter.

I have, etc.,

R. HODGSON,  
*Lieutenant-Governor.*

*Report of the Honourable Mr. Attorney General Sullivan.*

ATTORNEY GENERAL'S OFFICE, PRINCE EDWARD ISLAND, 26th April, 1879.

SIR,—I have read the despatch from the Secretary of State to your honour, dated 17th April instant, transmitting report of the Minister of Justice, on the bill passed by the legislature of this province, in the session of 1878, and reserved by you for the assent of his Excellency the Governor General, intituled:—"An Act to repeal certain Acts relating to the Church of England in this province, and to make provisions in lieu

thereof," and, also, a copy of a minute of the Privy Council of Canada, recommending that the assent of his Excellency the Governor General be given to the said bill.

By the 57th and 90th sections of the British North America Act it is provided that a bill, reserved for the signification of the Governor General's pleasure, shall not have any force, unless and until within one year from the day on which it was presented to the Lieutenant-Governor for the Governor General's assent, the Lieutenant-Governor signifies, by speech or message, to each house of the legislature, or by proclamation, that it has received the assent of the Governor General in Council.

The bill in question was presented to your honour for assent, on the 18th April, 1878, and by you then reserved for the Governor General's assent, which was obtained on the 14th April, 1879; the despatch signifying that such assent had been given, was received by your honour on 22nd April, 1879, four days after the expiring of the year, within which it was competent for your Honour to have issued the proclamation referred to in the above quoted sections of the British North America Act.

I am of opinion that notwithstanding the fact that the said bill has received the assent of the Governor General, your Honour is precluded, by the above quoted sections of the British North America Act, from announcing it to the legislature, and that, therefore, the bill cannot now have any force or effect.

I have, &c.,

W. W. SULLIVAN,  
*Attorney General.*

*The Deputy Minister of Justice to the Honourable the Secretary of State.*

DEPARTMENT OF JUSTICE, OTTAWA, 15th May, 1879.

Upon the reference from the Secretary of State, with the despatch from the Lieutenant-Governor of Prince Edward Island, respecting the reserved Bill, intituled: "An Act to repeal certain Acts relating to the Church of England, and to make certain provisions in lieu thereof:"

I recommend that the Lieutenant-Governor be informed that the course he suggests, namely, to have the bill re-enacted and assented to at the next session of the local legislature, appears to be a proper one to remove all doubts in the premises.

That, as he did not transmit the bill till July, 1878, and, in transmitting it, did not mention when it had been presented to him for his assent, it was thought that there was plenty of time within which to deal with it, and that in future it will be convenient if, in transmitting bills which have been reserved, he will, in his despatch, state the day upon which it was presented to him for assent.

Z. A. LASH,  
*Deputy Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th June, 1879.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th June, 1879.

I have the honour to report upon the Acts passed by the legislature of the province of Prince Edward Island, in the year 1878, as follows:—

To the Acts chapters 1 to 11, and 14 to 30 there appears no objection, and I recommend that they be left to their operation.

Cap. 12.—"The County Courts Amendment Act, 1878."

I beg to call attention to the provisions of section 61 of this Act, which gives the judge of the county court a fee of 50 cents for taxing the costs in a suit. The principle involved in this legislation appears to me very objectionable.



The judges of the county courts are appointed by the Governor General under the 96th section of the British North America Act, 1867, and by the 100th section of that Act, the salaries, allowances, and provisions of such judges are to be fixed and provided by the parliament of Canada.

The parliament of Canada did fix and provide for the payment of the salaries and allowances, &c., of these judges, and during the session which has just closed, an Act was passed placing these upon the same footing with regard to salary as the other county court judges in the Dominion, the salaries being increased by the sum of \$400 each.

A similar question came up in connection with an Act which was passed by the legislature of Ontario in 1869, whereby the sum of \$1,000 each per year was allowed to the judges of the superior courts, payable out of the moneys of the province.

The opinion of the law officers of the Crown in England as to the authority of the provincial legislature to pass such an Act was taken, and they gave it as their opinion that it was not competent for the provincial legislature to pass it.

On the 19th January, 1870, the then Minister of Justice reported upon the Act and recommended its disallowance. It was disallowed. The Minister of Justice at that time expressed his own opinion that the judges of the superior courts could not properly, and without a breach of the provisions of the British North America Act, receive emolument for performing the judicial duties, from any but the power which appoints and pays them the legal salary attached to their office.

It seems to me to be beyond the powers of the local legislature to allow to the judges of the county courts fees, for performing their duties as such judges, while they at the same time receive a fixed salary from the Dominion government for the performance of those duties.

In a subsequent session, the Ontario legislature passed another Act giving to each of the judges of the superior courts the sum of \$1,000 per year in addition to their salary.

This Act, though not specially reported upon, was not disallowed.

The principle of allowing judges fees, for part of their judicial work, is much more objectionable than allowing them to be paid an additional salary from the provincial government.

The principle of paying judges by fees was long ago found to be a vicious one, calculated to interfere with the independence of the bench.

It may be said that it is not worth while interfering with the Act in question. The fee allowed to the judge being so small, and he being allowed it in respect of one service only in the suit. The matter, however, is one of principle rather than one of degree, and I think the Act should be disallowed, unless the provincial government undertake to promote legislation at the next session, to repeal the objectionable part.

I recommend that the attention of the Lieutenant-Governor be called to these remarks, and that he be requested to submit the same, for the immediate consideration of his government with a view to a reply being given without delay.

Cap. 13.—“An Act to amend ‘An Act regulating the sale, by License, of Spirituous Liquors.’”

It may be that some of the provisions of this Act are an interference with the powers of the Dominion parliament to regulate trade and commerce.

As, however, similar legislation has been left to its operation in the other provinces, and as if the Act be *ultra vires*, any person aggrieved may test its validity, I recommend that it be left to its operation.

#### *Reserved Bill.*

In addition to the above Acts, a bill was passed, intituled: “An Act to incorporate the Provincial Grand Orange Lodge of Prince Edward Island, and the subordinate lodges in connection therewith,” which was reserved by his Honour the Lieutenant-Governor for the signification of his Excellency’s pleasure thereon.

The bill incorporates certain persons, and their associates, under the name of the "Provincial Grand Orange Lodge of Prince Edward Island," gives the corporation the usual powers incident to corporations, and makes certain provisions as to how subordinate lodges may become incorporated.

In 1873, two bills were passed by the legislature of Ontario, intituled: "An Act to incorporate the Loyal Orange Association of Western Ontario;"

And "An Act to incorporate the Loyal Orange Association of Eastern Ontario;" which were reserved by the Lieutenant-Governor for signification of his Excellency's pleasure thereon. Upon these bills, the then Minister of Justice, Sir John A. Macdonald reports as follows:—

"That these Acts purport to incorporate two provincial associations. That the only object of these associations appearing on the face of the Acts, is the holding of property, real and personal. That this being a provincial object, the Acts are within the competence and jurisdiction of the provincial legislature.

"Such being the case, in the opinion of the undersigned, the Lieutenant-Governor of Ontario ought not to have reserved these acts for your Excellency's assent, but should have given his assent to them as Lieutenant-Governor.

"Under the system of government that obtains in England as well as in the Dominion and its several provinces, it is the duty of the advisers of the Executive, to recommend every measure that has passed the legislature for the executive assent.

"The provision in the British North America Act, 1867, 'That Your Excellency may reserve a bill for the signification of Her Majesty's pleasure,' was solely made with a view to protection of imperial interests, and the maintenance of imperial policy, and if your Excellency should exercise the power of reservation conferred on you, you would do so in your capacity as an imperial officer and under royal instructions.

"So in any province the Lieutenant-Governor should only reserve a bill in his capacity as an officer of the Dominion, and under instructions from the Governor-General.

"The ministers of the Governor General and of the Lieutenant-Governor, are alike bound to oppose, in the legislature, measures of which they disapprove, and if, notwithstanding, such a measure is carried, the ministry should either resign, or accept the decision of the legislature and advise the passage of the Bill.

"It then rests with the Governor General or the Lieutenant-Governor, as the case may be, to consider whether the Act conflicts with his instructions, or his duty, as an imperial or a Dominion officer, and if it does so conflict, he is bound to reserve it, whatever the advice tendered to him may be, but if not, he will doubtless feel it his duty to give his assent in accordance with advice to that effect, which it was the duty of his ministers to give.

"With respect to the present measures, the undersigned is of opinion that the Lieutenant-Governor ought to have reserved them for your Excellency's assent, as he had no instructions from the Governor General in any way effecting these bills.

"They are entirely within the competence of the Ontario legislature, and if he had sought advice from his legal adviser, the Attorney General of Ontario, on the question of competence, he would undoubtedly have received his opinion, that the Acts were within the jurisdiction of the provincial legislature.

"This is evident from the fact, that, as appears by the votes and proceedings of the legislature, the Attorney General voted for and supported the bill, as a member of the legislature.

Under these circumstances the undersigned recommends that the Lieutenant-Governor be informed that your Excellency does not propose to signify your pleasure with respect to these reserved Acts, or take any action upon them.

"If the Acts should again be passed, the lieutenant-governor should consider himself bound to deal with them at once, and not ask your Excellency to intervene in matters of provincial concern, and solely and entirely within the jurisdiction and competence of the legislature of the province.

"The reserved Bill, under consideration, is of precisely the same nature as the bills passed by the Ontario legislature, and the remarks above quoted apply thereto. For

these reasons, it would not have been proper to recommend that the assent of his Excellency should be given to it."

I recommend that the substance of the foregoing remarks be communicated to the Lieutenant-Governor.

I concur.

JAS. McDONALD,  
*Minister of Justice.*

Z. A. LASH,  
*Deputy Minister of Justice.*

## PRINCE EDWARD ISLAND—42ND VICTORIA, 1879.

1ST SESSION—28TH GENERAL ASSEMBLY..

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th day of April, 1881.*

DEPARTMENT OF JUSTICE, OTTAWA, 6th April, 1881.

I have the honour to report upon the Acts passed by the legislature of the province of Prince Edward Island, in the forty-second year of Her Majesty's reign, as follows:—  
Chapters 1 to 24 are unobjectionable.

I recommend that the power of disallowance be not exercised with respect to these Acts.

JAMES McDONALD,  
*Minister of Justice.*



## PRINCE EDWARD ISLAND,—43RD VICTORIA, 1880.

2ND SESSION—28TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 17th November, 1881.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th November, 1881.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the Acts passed by the legislature of the province of Prince Edward Island, in the year 1880, received by the Secretary of State on the 14th day of December, 1880, as follows :—

Chapters 1 to 12, and 14 to 24.

The above Acts do not seem to call for any special remark, or for exercise of the power of disallowance. I recommend that they be left to their operation.

Cap. 13.—“An Act to amend an Act regulating the sale by license of Spirituous Liquors.”

The undersigned recommends that the power of disallowance be not exercised with respect to this Act, but desires to remark that some of its provisions may be held to be beyond the legislative authority of the provincial legislature, as encroaching upon the regulation of trade and commerce, but as the precise extent of the authority of parliament, and of the provincial legislature over the subject matter has not yet been finally determined, and as legislation of a similar character in other provinces has been left to its operation, the undersigned recommends that the power of disallowance be not exercised with respect to this Act.

A. CAMPBELL,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND,—44TH VICTORIA, 1881.

3RD SESSION—28TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th November, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th November, 1882.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has had under consideration the Acts of the general assembly of the province of Prince Edward Island, passed in the year 1881; and he recommends that the power of disallowance be not exercised in regard to the following Acts, namely:—Chapters 1 to 17, and 19 to 36.

In reference to chapter 18, intituled: "An Act respecting the Administration by the Crown of the Estate of Intestates in certain cases," the undersigned has submitted a separate report.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st December, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th November, 1882.

*To His Excellency the Governor General in Council :*

The undersigned has had under consideration, an Act passed by the general assembly of the province of Prince Edward Island in the year 1881, chaptered 18, and intituled: "An Act respecting the Administration by the Crown of the Estates of Intestates in certain cases."

He observes that by the 8th section of the Act, it is provided that, "moneys realized from estates, to which the Attorney General is administrator under this Act, shall be kept in a separate account in such bank, or invested in such manner as the Lieutenant-Governor in Council may, from time to time, appoint, and all moneys which have been unclaimed for ten years, shall, from time to time, be paid into the treasury of this Island, for the use and benefit of Her Majesty."

Among the estates to which the Attorney General may, by that Act, become administrator, is included the estates of persons dying intestate and without heirs or next of kin.

In the case of *Mercer vs. the Attorney General of Ontario*, the Supreme Court of Canada decided that revenue derived from e-cheats is, by the 102nd section of the British North America Act, placed under the control of parliament as part of the Consolidated Revenue Fund of Canada.

Although that case is the subject of an appeal to the Judicial Committee of the Privy Council, the undersigned is of opinion that it should be upheld in Canada until reversed.

For these reasons he recommends that the Act in question be disallowed.

A. CAMPBELL,  
*Minister of Justice.*

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*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 1st December, 1882.*

On a report dated 13th November, 1882, from the Minister of Justice, stating that he has had under consideration an Act passed by the general assembly of the province of Prince Edward Island, in the year 1881, 44 Vic., chap. 18, and intituled: "An Act respecting the Administration by the Crown of the Estates of Intestates in certain cases;"

The minister observes that among the estates to which the Attorney General may, by that Act, become administrator, are included the estates of persons dying intestates and without heirs or next of kin, and that by the 8th section of the Act it is provided that "moneys realized from estates to which the Attorney General is administrator under this Act, shall be kept in a separate account in such bank or invested in such manner as the Lieutenant-Governor in Council may, from time to time, appoint, and all moneys which have been unclaimed for ten years shall, from time to time, be paid into the treasury of this island, for the use and benefit of Her Majesty."

The minister submits that in the case of *Mercer vs. The Attorney General of Ontario*, the Supreme Court of Canada decided that revenue derived from escheats is, by the 102nd section of the British North America Act, placed under the control of parliament as part of the Consolidated Revenue Fund of Canada, and that case is the subject of an appeal to the Judicial Committee of Her Majesty's Privy Council.

The minister is of opinion that the attention of the Lieutenant-Governor of Prince Edward Island should be called to the case cited, and that he should be informed that although your Excellency has not been advised to disallow, in the meantime, the Act under consideration, its provisions would be illegal in the event of the decision of the Supreme Court in the case referred to being upheld by the Judicial Committee.

The committee concur in the report of the Minister of Justice, and they recommend that the Lieutenant-Governor of Prince Edward Island be informed to that effect.

JOHN J. MCGEE,  
*Clerk Privy Council.*

## PRINCE EDWARD ISLAND.—46TH VICTORIA. 1882.

4TH SESSION—28TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th February, 1883.

*To His Excellency the Governor General in Council:*

The undersigned having had under consideration the Acts of the general assembly of the province of Prince Edward Island passed in the session of 1882, recommends that the same be left to their operation.

Chapters 1 to 29 inclusive.



## PRINCE EDWARD ISLAND—46TH VICTORIA, 1883.

1ST SESSION—29TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 20th March, 1884.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th February, 1884.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Acts of the general assembly of the province of Prince Edward Island, passed in the year 1883, chapters 1 to 29, respectfully recommends that they be left to their operation.

While making this recommendation, the undersigned deems it proper to observe that by chap. 8, intituled : "An Act to continue certain Acts therein mentioned," the Act 24th Vic., chap. 7, intituled : "An Act for the preservation of the Alewives Fisheries in this Island," and 26th Vic., chap. 10, intituled : "An Act to alter and amend the Act for the preservation of the Alewives Fisheries in this Island," are continued and made perpetual. It is quite clear that the legislature of Prince Edward Island could not now pass these Acts, the subject of sea coast and island fisheries being within the exclusive legislative authority of Parliament.

It is equally clear that the legislature of Prince Edward Island has no power to continue these Acts in force after the date at which they expire.

The Act in question continued a number of other Acts within the legislative authority of the legislature of Prince Edward Island, and it is, in the opinion of the undersigned, expedient to leave it to its operation, calling the attention of the local authorities to the provision continuing the two Acts specially referred to, namely, 24 Vic., chap. 7, and 26th Vic., chap. 10. The attention of the Minister of Marine and Fisheries has also been called to this matter.

By chapter 11, intituled : "An Act relating to the Acts of the Dominion Parliament, respecting Insolvent Banks, Insurance Companies, Loan Companies, Building Societies and Trading Corporations," provisions are made similar to those contained in the Act of the parliament of Canada, 46th Vic., chap. 23, intituled : "An Act respecting Insolvent Banks, Insurance Companies, Loan Companies, Building Societies and Trading Corporations."

The Act of the Island legislature was assented to on the 29th day of April, 1883, and that of parliament on the 25th day of May, 1883.

While it is probably true that the former is unnecessary, the undersigned is of opinion that no public inconvenience can arise from leaving it to its operation.

By chapter 25, intituled : "An Act to incorporate the Inland Steam Navigation Company of Prince Edward Island," certain persons are incorporated by the name of the Inland Steam Navigation Company, and are given the general powers made incident to a corporation by the Act of the assembly of the Island, 15th Vic., chap. 14, and Acts in amendment thereof, but the objects for which corporate powers are given are not stated.

It is, therefore, impossible to say whether the objects are provincial or are not, and the undersigned is of opinion that the attention of the Lieutenant-Governor should be called to the omission.

If this report is approved, the undersigned recommends that the substance of it be communicated to the Lieutenant-Governor of Prince Edward Island.

A. CAMPBELL,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND—47TH VICTORIA, 1884.

## 2ND SESSION—29TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th April, 1885.*

DEPARTMENT OF JUSTICE, 26th March, 1885.

*To His Excellency the Governor General in Council :*

The undersigned having considered the Acts passed by the legislature of the province of Prince Edward Island in the year 1884, chapters 1 to 26, has the honour to report that he sees no objection to the Acts, and respectfully recommends that they be left to their operation, and that the Lieutenant-Governor of Prince Edward Island be so informed

A. CAMPBELL,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND—48TH VICTORIA, 1885.

## 3RD SESSION—29TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th March, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 25th February, 1886.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Acts of the legislature of the province of Prince Edward Island passed in the session held in the year 1885, chapters 1 to 17, respectfully recommends that they be left to their operation.

In making this recommendation the undersigned desires, however, to observe that by section 24 of chapter 10, intituled: "An Act to incorporate the Telephone Company of Prince Edward Island," it is provided that any person, who shall wilfully or maliciously injure, molest or destroy any of the lines, post or other material, or property of the company, shall be liable for each offence to a fine not exceeding \$20.

Provision is made for the punishment of such an offence as this by the criminal law of Canada relating to malicious injuries to property.

The undersigned recommends that the attention of the Lieutenant-Governor of Prince Edward Island be called to this section with a view to its amendment.

All of which is respectfully submitted.

JOHN S. D. THOMPSON,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND—49TH VICTORIA, 1886.

4TH SESSION—29TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th April, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th March, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the Acts, passed by the legislature of the province of Prince Edward Island in the session of 1886, authentic copies of which were received by the Secretary of State on the 12th October last.

The 9th, 15th, 16th, 17th, 18th and 20th sections of the Act, 49th Victoria, chapter 4, intituled: "An Act respecting the Public Health," deal with the subject of quarantine, which by the 11th paragraph of the 91st section of the British North America Act, 1867, is exclusively within the legislative authority of the parliament of Canada, and in respect to which parliament has exercised its powers of legislation. (R. S. C., c. 68.)

The undersigned recommends that the attention of the Lieutenant-Governor of Prince Edward Island be called to the matter, with a view to steps being taken to repeal the sections mentioned, and that the further consideration of the Act by your Excellency in Council be for the present deferred.

The undersigned having considered the other Acts of the legislature of Prince Edward Island, passed in the session of 1886, chapters 1 to 3 and 5 to 19, recommends they be left to their operation, and that the Lieutenant-Governor be informed thereof.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th August, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 8th August, 1887.

*To His Excellency the Governor General in Council :*

Adverting to his report of the 30th March last upon the Acts passed by the legislature of the province of Prince Edward Island in the session of 1886, the undersigned has the honour to report that by the Act of that legislature, 50 Victoria, chapter 5, intituled: "An Act to amend an Act respecting the Public Health," sections 9, 15, 16, 17, 18 and 20 of the Act of the same legislature, 49 Victoria, chapter 4, intituled: "An Act respecting the Public Health," were repealed, and to recommend that the Act last mentioned be left to its operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*



## PRINCE EDWARD ISLAND—50TH VICTORIA, 1887.

1ST SESSION, 30TH GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th July, 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the Acts of the legislature of the province of Prince Edward Island passed in the year 1887, and begs to recommend that they (chapters 1 to 7, and 9 to 23) be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 30th July, 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon chapter 8 of the legislature of the province of Prince Edward Island, passed in the year 1887, as follows :—

Chapter 8, Charlottetown Water Works Act, 1887.

The undersigned begs to call attention to the provisions of sections 19, 20 and 28 of this Act, which are mainly intended to attach penalties to unlawful acts which are now punishable under section 68 of the Revised Statutes respecting malicious injuries to property.

The policy of attaching penalties and punishments by provincial legislation, to offences against the criminal law, seems to be of very doubtful utility, and the validity of such provisions is open to doubt.

The undersigned, however, has not thought it necessary to recommend the disallowance of this Act, but recommends that a copy of this report, if approved, be sent to the Lieutenant-Governor of the said province, in order that the attention of his advisers may be called to this subject.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND,—51ST VICTORIA, 1888.

### 2ND SESSION—30TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 30th January, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th January, 1889.

*To His Excellency the Governor General in Council :*

The undersigned, having had under consideration the Acts of the legislature of the province of Prince Edward Island, passed in the session held in the year 1888, chapters 1 to 11, 13, and 15 to 22, respectfully recommends that they be left to their operation.

Respectfully submitted.

JOHN S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th February, 1889.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th January, 1889.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit for consideration his report on chapters 12 and 14, entitled respectively : "An Act to consolidate and amend the several Acts incorporating the City of Charlottetown," and "The Prince Edward Island Joint Stock Companies Act," passed by the legislature of the province of Prince Edward Island in the session of 1888 ; an authentic copy of which was received by the Secretary of State on the 28th August last.

Chapter 12, section 76, of this Act, authorizes the city council to levy a personal tax upon commercial travellers. It is doubtful whether legislation of this character is not an infringement upon the exclusive power of the Dominion parliament to legislate in respect to trade and commerce.

Section 112 is undoubtedly an infringement of this power, inasmuch as it legislates directly in respect to the harbour of Charlottetown, which, under the provisions of the British North America Act, is vested in the Dominion parliament.

Inasmuch as the object which the legislature of Prince Edward Island had in view in enacting this provision may be obtained in another way, the undersigned recommends that the section be repealed.

By section 114 of this Act, power is given to the city council to make by-laws in connection with the regulation of markets, and as to the manner of selling and weighing divers staple articles.

It also gives power to regulate and provide by By-law "for the erection and rent of wharfs, piers, quays and docks in the city, and the tolls or wharfage to be paid for vessels or steam boats touching thereat." It also provides for the enforcement, by by-law, of the due observance of the Sabbath, and for by-laws to prevent vice, immorality and indecency in the streets and other public places within the city, and to "regulate the sale of goods, wares, or merchandise, either by samples or otherwise, by public auction or by private contract in the said city by commercial travellers or agents."

This legislation touches subjects which are under the control of the parliament of Canada. It proposes to deal with these subjects as if they were under the control of the provincial legislature. It may therefore, lead to confusion by appearing to permit Municipal regulations, not altogether subordinates to the legislation and the legislative rights of the parliament of Canada.

It is possible, however, that these enactments may be useful and that by-laws may be made under them, which will be within provincial and municipal authority, as for instance, the regulation of the places where markets may be held, the enforcement by the police of the enactments of Canada regulating the sale by weight or otherwise, of various commodities, and the erection and management of wharfs, etc., on property be longing to the city.

The undersigned therefore deems it sufficient to call attention to the necessity for care in the carrying out of such enactments, and does not recommend that the power of disallowance be exercised in respect to them.

Section 135 provides that the Lieutenant-Governor in Council shall appoint a stipendiary magistrate for the city of Charlottetown, with jurisdiction to hear every criminal offence and prosecution cognizable before two justices of the peace.

By section 147 it is enacted that the stipendiary magistrate of the said city for the time being shall hold a court for the recovery of small debts, to be known as "The City Court" and he shall be the judge of such court.

By section 148 the said city court is vested with the same jurisdiction, powers and authorities up to, but not beyond, the sum of \$80.00, as the county courts of judi- cature now possess, by virtue of any Acts of the legislature of the province, and the said court and the judge thereof, shall, subject to the limitations aforesaid, have the same powers as the county court judges possess by virtue of any of the Acts aforesaid, for the collection of debts.

Other provisions in the Act give to the judge of the city court the same powers in respect to practice, relief of insolvent debtors, arrests and other matters, as are possessed by county court judges.

The undersigned is of opinion that the judge of the city court referred to in these sections, is not such an officer as may be appointed by the Lieutenant-Governor of the province, but that he is a judge within the meaning of section 96 of the British North America Act, and should therefore be appointed by your Excellency in Council, and he therefore recommends that the attention of the Lieutenant-Governor of Prince Edward Island be called to this enactment with a view to his advisers promoting legislation, either conferring different jurisdiction on the stipendiary magistrate, or providing that his appointment shall vest in your Excellency in Council, under the provisions of the British North America Act, and that further action in respect to the Act in question be deferred, until after the answer of his Honour the Lieutenant-Governor shall have been received.

Chapter 14. —Section 62 of this Act, having reference among other things to bills of exchange and promissory notes, is, in the opinion of the undersigned, an infringement upon the exclusive authority in that respect of the Dominion parliament, and should be repealed.

The undersigned respectfully recommends that a copy of this report, if approved, be transmitted to his honour the Lieutenant-Governor of Prince Edward Island.

JNO. S. D. THOMPSON,  
*Minister of Justice.*



## PRINCE EDWARD ISLAND—52ND VICTORIA, 1889.

3RD SESSION—30TH GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 28th June, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 31st May, 1890

*To His Excellency the Governor General in Council :*

The undersigned respectfully recommends that the Acts passed by the legislature of the province of Prince Edward Island in the session of 1889, chapters 1 to 23 inclusive, be left to their operation.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND—53RD VICTORIA, 1890.

1ST SESSION—31ST GENERAL ASSEMBLY.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th March, 1891.

*To His Excellency the Governor General in Council :*

The undersigned having considered the Acts passed by the legislature of the province of Prince Edward Island, in the session held in the year 1890, chapters 1 to 20, and 22, respectfully recommends that they be left to their operation, and that the Lieutenant-Governor of that province be informed thereof. Received by the Secretary of State, 18th August, 1890.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th March, 1891.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon an Act passed by the legislature of the province of Prince Edward Island in the session held in the year 1890, chaptered 21, intituled "An Act to incorporate the Full Electric Company of Prince Edward Island," which Act was received by the Secretary of State on the 18th August, 1890.

Sections 35 and 36 of this Act would appear to be legislation affecting criminal law, and the offences therein legislated against, would seem to be sufficiently provided for by the Act in respect to malicious injuries to property, contained in the Revised Statutes of Canada.

The undersigned would recommend that the attention of the Lieutenant-Governor of the province be called to these sections, with a view to their repeal at the next meeting of the legislature.

The undersigned nevertheless recommends that the Act be left to its operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND—55TH VICTORIA, 1891.

### 2ND SESSION—31ST GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th August, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th May, 1892.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined all the Acts of the general assembly of the province of Prince Edward Island passed in the year 1891, and assented to on the 15th day of July, 1891, containing twenty chapters, and he begs to recommend that the same be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND--55TH VICTORIA, 1892.

3RD SESSION--31ST GENERAL ASSEMBLY.

*Petition from Edward Byrne and others, to the Honourable the Minister of Justice.*

CHARLOTTETOWN, P.E.I., May, 1892.

SIR,—Your memorialists respectfully suggest the following reasons for disallowing the bill passed by the local legislature of this province at its last session, intituled: "An Act to regulate, by police and municipal regulations, the sale of Intoxicating Liquors in the city of Charlottetown, and so to preserve therein, public decency, and repress drunkenness and disorderly conduct."

1. The bill is framed to operate only in the municipality known as the city of Charlottetown. Under the provisions of the British North America Act, the local legislature could only deal with the question of the sale of intoxicating liquor within the municipality on either of two grounds: first, for the purpose of raising a revenue, or for the good government and maintenance of peace in the municipality. The bill objected to, does not legislate for the purpose of raising a revenue, local or provincial. The authority upon which the legislature can claim the power to legislate must, therefore, be under subsection 8 of section 92, British North America Act.

2. Your memorialists submit that said subsection 8 cannot give the authority claimed. The words, "municipal institutions in the province," cannot surely mean that the legislature can deal with subjects reserved for the federal government, such as the regulation of trade and commerce.

3. Your memorialists submit that the laws enacted for the good government of a municipality, under said subsection 8, must be reasonable, and such as can fairly be considered as tending to the promotion of the object in view. Regulations restricting the retail liquor trade to certain hours, is clearly in the interest of peace and order, but restrictions on the wholesale trade are not.

The Act complained of goes still further, and enacts that no intoxicating liquor in any quantity, can be sold in the municipality within certain hours, that is to say from or after the hour of six o'clock on Saturday afternoon, till seven o'clock on Monday morning thereafter, nor during the balance of the week from the hour of ten o'clock at night, until 7 o'clock in the forenoon of the next day. The statute also provides that no sale of intoxicating liquor in any quantity shall be made in the city "except in a room or apartment built and constructed as follows: viz., On a ground floor open to view in its entire interior, without partition or screen, containing as fixed furniture therein, nothing except a counter not exceeding three feet in height, having only one entrance or exit, and that one, on and facing one of the public streets of the city, and having facing such street, a window so built and constructed, as to afford full view from without of the interior of such room or apartment."

Your memorialists admit that this provision in section three of the said Act has no bearing or tendency "to maintain public decency and repress drunkenness" in the city. This enactment is harsh and unreasonable and more for the purpose of obstructing dealers and the public, than for the benefit of the city.

If this enactment becomes law, a hogshead of ale or beer cannot be sold from a warehouse or brewery, or by order, in this city, unless in a room on a public street constituted as mentioned above. We submit that the provision in said Act clearly interferes with matters or subjects over which the parliament of Canada alone has jurisdiction. The sale of a hogshead of beer by a brewer, to a ship in port, to be carried beyond the limits of this province, unless sold within the restrictions of the Act will constitute a violation of the statute. No sale can be effected by correspondence nor



can the price of the goods sold on credit be recovered by the vendor, whether sold to a citizen, or by correspondence to a citizen of another province or country.

While this provision of section seven may be within the power of the legislature the section is novel and unworkable.

Your memorialists humbly submit that the statute complained of is beyond the power of the local legislature to pass, that it infringes upon the jurisdiction of the parliament of Canada in obstructing trade and commerce, and that it is not calculated to promote the good government, peace and order of the city.

For these reasons we humbly submit that the said statute should not be assented to, by his Excellency the Governor General.

And your petitioners as in duty bound will ever pray:—

P. P. GILLIS.  
EWEN MACDOUGALL.  
F. McKENNA.  
DOM. REDDIN, Jr.  
JAMES BYRNE.

EDWARD BYRNE.  
JAMES EDEN.  
MORRIS & HYNDMAN,  
J. A. T. MORRIS.

*The Honourable Attorney General Peters to the Honourable the Minister of Justice.*

CHARLOTTETOWN, 6th October, 1892.

DEAR SIR,—Referring to the memorial addressed to you by certain liquor dealers in Charlottetown, asking for the disallowance of the statute passed at the last session of the legislature of Prince Edward Island, intituled: “An Act to regulate by police and municipal regulations, the sale of Intoxicating Liquors in the city of Charlottetown, and so to preserve therein public decency and repress drunkenness and disorderly conduct,” and in further reply to the letter received by me from the Deputy Minister of Justice, dated the 23rd Sept. ult., I would respectfully submit the following observations with regard to the Act:

In the first place, I contend our legislature has clearly power to pass any statute relating to municipal institutions in the province, and also relating to any matter of a merely local or private nature in the province—this power being expressly given by subsections 8 and 16, of section 92, of the British North America Act.

The statute in question, in the first place, has for its object the preservation of good order in one municipality only, namely, that of Charlottetown, and it is therefore purely local in its operation. Its several provisions are confined in their operation to the regulation of the sale of liquor in Charlottetown, and it is submitted are all *intra vires*, under either one of the heads of “regulations of municipal institutions in the province,” or of “purely local matters.” The first provision is that the sale of liquor shall only take place in rooms of a certain description. The object of this section is apparent. Experience has shown that drinking greatly increases if it is carried on in places to which people can resort secretly. By the present Act, any person who wishes to resort to a bar-room must do so openly. This section is now doing good work. The pernicious habit of treating has, to a great extent, been stopped by it, as the majority of people who go into bar-rooms, especially in a small place like this, do not care to stay in for any greater length of time than to enable them to get their drink; and, consequently, the habit which existed heretofore, and which was responsible for a great deal of drunkenness—that when two or three went into a bar-room every one treated in turn—has been greatly decreased. Practically speaking, this provision of the law is now being observed by almost all, if not all, of the liquor dealers in Charlottetown.

I would also direct your attention to the fact that, the case of “*Queen vs. Hodge*,” is a direct authority that a regulation of this kind does come within the power of the local legislatures. I do not understand from the memorial that the signers actually contend this section is beyond the powers of the legislature, but they seem to say that it is an unreasonable provision, and one that has no tendency to maintain decency or repress

drunkenness in the city. Assuming for the sake of argument that the local legislature has the power to pass a statute of this nature, I would respectfully submit that the local legislature alone has the right to judge what the particular provisions of the statute should be. But, as a matter of fact, we have now had experience of the law since it came into force in July, and I have no hesitation in saying that this provision has not proved harsh or unreasonable, and that it has shown itself of valuable assistance in maintaining public decency, and repressing drunkenness in the city. I think I am safe in saying that this clause is looked upon by all classes of our people as being most beneficial.

As I understand the memorialists, they raise a further objection to this clause on the ground that it does, or may, interfere with the wholesale dealing in liquors. A definition of what is wholesale dealing would be necessary before a statute could be framed to exactly meet this case. We have very few wholesale dealers in this city, in fact, I doubt if there is one who would come within what would be properly deemed a wholesale dealer in liquor, except perhaps the one brewery owned by Messrs. Morris & Hyndman who signed the petition. If there was a statute passed by a competent parliament, defining what "wholesale" means, it would be easy to frame a statute which would regulate only the retail trade, which is practically all we aim at; but if we were to insert in this statute, a clause that it should not apply to "wholesale" dealing, who could judge what sale came within the exception? One man might consider "one" bottle wholesale, another, 10 gallons, etc. Any exception of this kind would be unworkable, without a definition of what "wholesale" means; and if the contention that we have no power to deal with wholesale selling at all be correct, how can we possibly have authority to define what wholesale means; the very definition itself would be legislating on the subject.

The clauses in the British North America Act, giving the local parliament power to deal with local matters, and giving the Dominion parliament power to deal with trade and commerce, must be read together; and a local statute which regulates the sale of a particular article in a particular locality may be perfectly good, although it incidentally does appear to transgress, on the ground that it interferes with trade and commerce. It does not matter whether the provisions regulating the sale of liquor may, to a certain extent appear to interfere with trade and commerce, provided the statute can, *bona fide*, be said to relate to "municipal institutions" in the province, or to deal with purely local matters. Here it cannot be said that trade or commerce is at all interfered with. The Act simply says you may sell as much liquor as you like, but for the purpose of preserving quiet in this locality, your sales must be carried on in a particular room, which can easily be provided.

That such provisions can legally be made I would refer to the different license laws now in force in the several provinces, every one of which contains provisions of a somewhat similar nature. If the local legislature cannot make a law regulating the place where liquor can be sold in any particular locality, neither can they regulate the sale of any other commodity. Take, for instance, kerosene oil. This is known to be dangerous, but if the contention now raised be correct, the local legislature could not pass a law authorizing the city of Charlottetown to regulate its safe storage or sale by by-law. Nor, to take another example, could the local legislature frame an Act to say that fish or meat could only be sold in certain places, although it is apparent that such regulations are absolutely necessary.

The power to regulate purely local matters is a very broad power and was given to the local parliaments, because it is obvious that, the circumstances of each province being different, it would be impossible to deal with the local subjects in the general parliament. A regulation that would be good in Charlottetown might be ridiculous if applied to Montreal, and *vice versa*.

The test is whether this Act does not deal with a purely local matter. I quite admit that, if we tried, under the pretense of passing a statute relating to local matters, to pass a statute which would in reality be prohibitive, it would be perfectly proper for the government at Ottawa to interfere. But this statute is a *bona-fide* attempt to pass a law simply to regulate the sale of liquor, not with the object of prohibition, but so

that the sale should be carried on in such a way as to do as little injury as possible. And; therefore, the disallowance of this Act, would be an undue interference with the rights of the province.

The Act was asked for by an immense number of people in Charlottetown, was passed by almost the consent of both sides of politics, and it has proved to be a fairly successful Act up to the present time.

The second provision of the Act is, that no liquor shall be sold to any one under 16 years of age. Surely this provision is good, whether it be of wholesale or retail : in fact the memorialists do not object to it.

The third provision is that the person who makes another intoxicated, shall be liable for the damages, as well as the person who actually does them. There is no objection raised to this section that I can see.

The next provision regulates the time when liquor shall be sold. The hours mentioned here are most reasonable. It cannot be sold after 10 o'clock on any week night but Saturday, nor after 6 o'clock on Saturday night. The very men who have signed this petition themselves approve of these provisions.

There is also a provision that liquor sold on credit shall not be recovered for. So far as we are concerned, this is not a new provision, for it has been the law of our province for years. How far this provision would affect sales made to people abroad, I do not know. But such a question has never arisen here, nor is it likely to arise, for there is no such thing as the exportation of liquor from this island. But the principle of the provision that liquor should not be sold on credit is, in my opinion, most beneficial. In the case of labourers who are employed at steady wages, and who get paid once a week or month as the case may be, if they run up a bill for liquor at the end of the week or month as the case may be, a large proportion of their wages will probably be spent in advance. Examples of this were brought before my notice before the bill was passed. Some examples were sworn to before the Royal Liquor Commission when in session here, and it was shown that in some cases, the wages of our labourers were practically mortgaged in advance, for liquor. It was to prevent this that the section was introduced, but as I said before, it is in reality not a new provision with us, the only objection to the section is the difficulty of enforcing it. The men who drink and run up a bill, will very often, in fact nearly always, pay it, although the law says they need not pay it.

In conclusion, I would say that it would be a very serious matter if this statute were disallowed. If there are any particular clauses in it which, on consideration, you think are *ultra vires*, and if you will point them out to me, I will be able to take into consideration the advisability of amending them at our next session, provided such amendments can be made, without interfering with the general efficiency of the Act. But I would point out to you, that, where so many decisions, some of them apparently conflicting, have been given as to what is and what is not within the powers of the local legislature, the proper place to decide these questions is before our courts. I, for one, would be quite prepared to lay the matter before the Supreme Court for decision and to be bound by their judgment.

I inclose you a copy of a judgment given by Mr. Justice Hodgson, on an application for a *certiorari*, which was made for the purpose of testing the constitutionality of this statute. The question there was certainly confined to the sale by retail; but at the same time, it is a judgment, in which the judge declares that in his opinion, the Act is constitutional.

Yours truly,

FRED. PETERS,

*Attorney General, P. E. Island.*



*Mr. Neil McLeod to the Honourable the Minister of Justice.*

CHARLOTTETOWN, P.E.I., 10th May, 1892.

The undersigned desires to present you with some reasons against allowing the bill passed by the provincial legislature at its late session intituled: "An Act respecting the Legislature" to go into operation.

This bill makes a radical change in the constitution of this province, abolishing the legislative council and enacting that after the dissolution of the present house of assembly the legislature shall be composed of the Lieutenant-Governor and one house known as the legislative assembly.

The preamble of the said bill sets out an agreement entered into between the house of assembly and the legislative council, whereby the legislative council had agreed to surrender its separate powers and privileges, and to establish a legislature of one house, known as the legislative assembly consisting of thirty members, one half at least of whom shall be chosen by the electors possessing a real estate qualification of the value of at least \$325.00, on the express condition that the qualification of electors and the proportion of members created by the said bill, should not be altered or diminished, unless by a two-thirds vote of the members of the legislative assembly thereby created.

In order to secure the permanency of the constitution called into existence by the measure, and to carry out the agreement before referred to, it is enacted by section 179 in draft that no change shall hereafter be made in the proportion of councillors, who shall sit in the legislative assembly, or in the qualification of electors entitled to vote for such councillors, unless such a change be agreed to by at least two-thirds of the members of the legislative assembly for the time."

If it is *intra vires* of the powers of the provincial legislature to enact that no change shall be made in the new constitution created, unless by a two-thirds vote of the members of the legislative assembly as constituted under the bill, it would be equally competent for our legislature to enact that a nine-tenths, or a unanimous vote, would be necessary to effect a change in our constitution.

If the provincial legislature really has the powers and jurisdiction claimed for it in this measure, it is undoubtedly competent to give this province a constitution, that no future legislature can vary or alter.

Under section 92, subsection 1, of the British North America Act, it is provided that each province in the confederation may amend from time to time the constitution of the province. This section clearly gives to each provincial legislature, that is to the majority of members constituting such provincial legislature, the power, from time to time, to alter and vary its constitution to suit the changed circumstances and condition of the people. Any legislation, therefore, that interferes with or restricts the majority of the members of a provincial legislature to effect a change in the constitution is not constitutional.

The preamble to said bill, and the speeches made by members of the legislative council during the progress of the measure before them, show that they would not have agreed to its provisions, if they thought the clause requiring a two-thirds vote to vary or change the new constitution was of no avail against the legislation of a new assembly.

It was on the assurance of the Attorney General that the clause referred to was binding on all future legislative assemblies, that the members of the legislative council agreed to the bill.

It may be contended that the clause under consideration is valueless, a nullity, and not binding on any future legislative assembly, and, therefore that no injury will actually result from allowing the bill to go into operation. The same can be alleged of all provincial bills, which contain provisions encroaching on matters over which the federal parliament alone has legislative jurisdiction, or provisions *ultra vires* of the local legislature. In this class of bills, it is the practice either to disallow the same, or require that the objectionable clause be repealed.

Should this bill become law, it will be strongly contended that the section complained of is binding on all future legislative assemblies, on the ground that the bill received the assent of his Excellency the Governor General. It is now contended by the members of the legislative council, that the bill is the result of an agreement arrived at between the two houses, the consideration of which was the permanency of the constitution, thus created, and the guarantee given to the property holders under section 179. If the provision requiring a two-thirds vote of the new legislature to alter the constitution, is held null and of no effect, the members of the legislative council, as well as the property holders, will contend that the consideration, upon which their agreement was based, having failed, effect should not be given to the bill constituting the agreement.

Assent to the bill, and its subsequent operation, will afford those who shall be opposed to any change in the constitution, a strong argument for disallowing any further legislation having for its object the liberalizing of the electoral franchise.

There are other provisions in the bill of a harsh and extraordinary nature, which, although *intra vires* of the powers of the provincial legislature, should constitute an element in considering the advisability of allowing the bill to go into operation.

In certain alterations made in the boundaries of the electoral districts of King's county, all natural as well as existing political divisions are removed, and the constituencies of Cardigan, St. Peter's, Murray's Bay, and Georgetown, reconstructed with the unconcealed and sole purpose of advancing the interests of the dominant political party. The districts sought to be created by this bill are geographically disconnected, and the people of one religious denomination are so grouped, as to impair their legitimate influence in public affairs.

The franchise sought to be established for the election of one half the members of the new legislative assembly, is utterly repugnant to the spirit of the present age. More than one half of the adult male population of the province, comprising a large portion of the most enterprising as well as the most educated of our citizens, are to be deprived, except in a secondary sense, of their votes in the provincial electoral contests.

The disability, which the bill attempts to place on all persons in the employment of the government of Canada, by preventing them from exerting, by means of their votes, the influence they should possess in the protection of their health, property and other interests, is a direct infraction of the rights and liberties of a large number of intelligent and educated men.

The bill repeals the section of the existing statute which prevents mortgagees from voting on investments in the different districts of the province. The legalizing of a mortgage vote is unprecedented in any other country, and its revival here, attended as it is by the disfranchisement, to such a large extent, of the resident intelligent voters, is fraught with great damage to the public interest.

I remain, &c.,

NEIL MACLEOD.

*His Honour the Lieutenant-Governor, to the Hon. the Secretary of State.*

GOVERNMENT HOUSE, PRINCE EDWARD ISLAND, 18th May, 1892.

SIR, I have the honour to transmit to you herewith, for the consideration of his Excellency the Governor General, as therein requested, copy of an address presented to me by my executive council, advising me to solicit from his Excellency, with a view to my yet assenting thereto, a return of the bill intituled an "Act respecting the Legislature," reserved for the signification of his Excellency's pleasure, and to intimate that I have declined to be guided by this advice, a decision in which my government acquiesce

I have &c.,

J. S. CARVELL,  
*Lieutenant-Governor.*

## ADDRESS OR MINUTE

*Presented to His Honour Jedediah Slason Carvell, Esquire, Lieutenant-Governor of the Province of Prince Edward Island, by the members of the Executive Council of said Province.*

EXECUTIVE COUNCIL CHAMBER, P.E.I., 10th May, 1892.

MAY IT PLEASE YOUR HONOUR :

We, the members of your Honour's executive council, humbly submit the following address or minute for your consideration.

At the last session of the legislature the two houses passed a bill entitled "Bill respecting the legislature," to which bill your honour deemed it right not to assent, but reserved the same for the consideration of his Excellency the Governor General.

The great importance of this bill to the people of this country, and the earnest desire which your council feel that it should become law, have induced us to hope and suggest that your honour may yet be able to take such steps, as may enable you to reconsider the decision you came to in the matter, and we are strengthened in this hope when we refer to the precedents which show that the usual course seems to be different from that adopted by your Honour.

We desire, in this address, to lay before your Honour the reasons for the opinions expressed therein.

The principle of law which governs your Honour's power to reserve a bill for consideration of his Excellency, is laid down in Bourinot on Parliamentary Law, page 658, and is that "in reserving or withholding assent from bill, Lieutenant-Governors are to act, not merely on their own discretion, but subject to instructions which must necessarily emanate from the Governor General in Council." In the absence of these instructions, they must act on their own discretion, and on the advice of their council.

This course has been laid down as correct by both Sir John A. Macdonald and James MacDonald, present chief justice of Nova Scotia, when Minister of Justice. (See opinion given in Sessional Paper of 1882, No. 141, page 161.)

The present bill deals with subjects which are clearly within the power of the local legislature.

Its main object is to change the constitution of our legislature (which the British North America Act authorizes us to do) by reducing the number of chambers to one.

At present we have two houses, the legislative council consisting of thirteen members, elected by voters who possess a certain real property qualification, and the house of assembly, consisting of thirty members, elected by voters who possess various qualifications, set forth in various Acts so liberal, that it almost amounts to manhood suffrage.

The scheme proposed by the statute under consideration is an amalgamation, it being provided that the present houses shall exist until the next dissolution, after which time there shall be one house only with thirty members, half elected by voters eligible to vote for our present legislative council, and the other half by voters eligible to vote for our present house of assembly. This is the main provision in the bill, and is one clearly within our powers, and with the exception of a few sections which we will refer to, the whole of the remaining portion of the bill is very little more than a consolidation of election laws, which became necessary if the constitution was to be altered. The bill leaves the districts as before with the exception that it was necessary to enlarge the bounds of Georgetown district in King's county. This district only containing about 200 voters, and it not being deemed fair to allow so small a constituency to exist, in face of the fact that several other constituencies contained as many as 2000 voters. In order to do this a change, had to be made in three of the constituencies in King's county, but in making this change due regard was had both to the position of the different portions of each district, and the number of voters therein.

In any case we humbly submit that the settling of the districts, *quo ad* local elections, is a subject peculiarly within our competence.



The bill further contains a clause taking away the votes of persons in the permanent employ of the various departments of the Dominion government service, this clause has been objected to by the members of the present opposition, not, we believe, on any ground that the clause is vicious in principle, but because they seem to fear that at present such a clause might affect them at the next election, an objection of this kind cannot, we submit, be entertained by your honour. We contend you have simply to ask the question. Is the clause within the competence of your parliament to pass? On this question there can be but one answer, namely, that this parliament clearly has the power to change the qualification of electors whenever it sees fit, this power has often been exercised without objection, since confederation. Were it necessary so to do, we could lay before your Honour good reasons why the clause in question should be passed. We will content ourselves by stating one, namely:—The duties of the Dominion government, and the local government are entirely different, the one having control of matters general to the whole Dominion, the other having control of matters local to the province only, it therefore should follow that so long as each government keeps within its sphere, neither should in any way be interfered with by the other, and especially the greatest care should be taken that the influence of the Dominion government should not be exercised, nor be suspected of being exercised, to assist the election of any particular set of men to the local government, without for a moment charging that any Dominion government have ever directly interfered in local elections here, those who have a knowledge of the practical working of elections in this province, cannot fail to know that a considerable number of the Dominion officials are in some way made to understand that it will be better for them not to vote against the local party, who for the time being, happens to be working in unison with the Dominion government then in power.

This and other reasons induced your parliament, with our full concurrence, to introduce the clause in question, and in so doing we are only following the example of other provinces, see Nova Scotia and Ontario.

There is only one other clause which calls for any comment, that is clause 179, and the preamble of the Act.

The preamble states that the Act is the result of a compromise between the two houses, and states that one term was that the constitution, should not be altered in one particular, namely, the qualification of the voters for the property candidates or council men, or the proportionate number of councillors in the new house, without a two-third vote of the new house.

It has been objected that this section is not binding, as one parliament, it is argued, cannot bind subsequent parliaments.

This objection was taken before both houses when the bill was being passed, and the members of both houses, notwithstanding the objection, passed the clause in question, looking at it as a guarantee that no change would be attempted at all events for some considerable time. This point is quite clear, that if any parliament can make such a clause binding, it is the local parliament and not the Dominion, and therefore, the clause in question in no way interferes with the power of the Dominion parliament. It must also be remembered that in order to abolish one of our houses, it was absolutely necessary to arrive at a fair compromise, and we fully recognized the fact which we hope your Honour will also recognize, that in order to succeed in our main object and abolish one of our houses, it was necessary to agree to any reasonable proposition proposed by the upper house. We, as a government, looked upon the principal feature of the bill as so important to this province, that we certainly were not, nor are we now willing to assume the responsibility of losing the whole bill by objecting to any clause proposed by the upper house which in itself was not open to any serious objection. Having thus stated the main provisions of the bill, and shown the reasons why they are unobjectionable, we venture to point out to your Honour that this bill is a most important one, and has achieved an object which prior governments ever since 1879, have in vain tried to accomplish. We have assurances from every part of the country that the provisions of the bill meet with the approval, almost universal, of our people, and we can assure your

Honour that the defeat of this bill will be deeply regretted not only by us, your advisers, but also by the whole of the people of this province.

If your Honour, after carefully perusing the authorities to which we have taken upon ourselves to refer you, should come to the conclusion that this bill should not have been reserved we would most respectfully ask and advise, you at an early date, to communicate with his Excellency the Governor General, asking him to return the bill to your Honour, in order that steps may yet be taken to have the bill assented to by your Honour in person.

We would also respectfully ask your Honour to forward a copy of this minute to his Excellency the Governor General for his consideration.

D. FARGUHARSON,  
THOMAS KICKHAM,  
J. W. RICHARDS,  
GEORGE FORBES,

FREDERICK PETERS, P.E.C.  
JAMES R. McMILLAN, C.P.W.  
ANGUS McMILLAN,  
ALEX LAIRD,  
PETER SINCLAIR.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 14th February, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 26th January, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has had referred to him a bill, which, in the session of 1892, was passed by both houses of the legislature of Prince Edward Island, intituled ; "An Act respecting the Legislature of Prince Edward Island," but reserved by his Honour the Lieutenant-Governor for the signification of your Excellency's pleasure thereon.

His Honour the Lieutenant-Governor has stated the grounds upon which, instead of assenting to the bill in question, he so reserved it.

The objects of the bill are to abolish the legislative council of the province and to provide for a legislature consisting of one house only, to change to some extent the representation and to amend the law relating to elections for the legislature.

These matters are entirely within the competence of the legislature. The bill was not reserved under instructions from your Excellency in Council, and, in the opinion of the undersigned, the reasons given by his Honour are not sufficient to warrant your Excellency in accepting any responsibility with regard to the measure.

The undersigned begs to refer, as dealing more fully and exhaustively with the matter, to an approved report of the late Sir John Macdonald, as Minister of Justice, of the 25th August, 1873, when reporting upon certain bills passed by the legislature of Ontario, and reserved by the Lieutenant-Governor of that province for the assent of the Governor General, and to another approved report of the 14th June, 1870, of the Honourable James McDonald, then Minister of Justice, in which he adopted the precedent of 1873, in dealing with a bill from the province of Prince Edward Island.

Should the bill now under consideration be passed as a statute of Prince Edward Island, the undersigned may have an opportunity of considering the objections which have been presented thereto, as based on constitutional right and usage, but for the present he deems it sufficient to reserve the right, and he recommends that your Excellency take no action upon the bill in question, and that his Honour the Lieutenant-Governor of Prince Edward Island be so informed.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st July, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th June, 1893.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Prince Edward Island, passed in the fifty-fifth year of Her Majesty's reign (1892), chapters 21 to 52 inclusive, received by the Secretary of State on the 1st August, 1893, and he is of opinion that they are unobjectionable and may be left to their operation.

Respectfully submitted.

J. ALDRIC OUMET,  
*Acting Minister of Justice.*



## PRINCE EDWARD ISLAND—56TH VICTORIA, 1893.

4TH SESSION, 31ST GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th March, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th February, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Prince Edward Island in the fifty-sixth year of Her Majesty's reign (1893), chapters 2 to 32, received by the Secretary of State for Canada on the 2nd day of June, 1893; and he is of opinion that they are unobjectionable, and may be left to their operation.

Chapter 1 has been reserved for a separate report.

The undersigned also recommends that if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor for his information.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th March, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 17th February, 1894.

*To His Excellency the Governor General in Council :*

The undersigned had the honour to report upon chapter 1 of the Acts of the legislature of the province of Prince Edward Island, passed in the fifty-sixth year of Her Majesty's reign (1893) received by the Secretary of State for Canada on the 2nd day of June, 1893, as follows :—

Chapter 1.—“An Act respecting the Legislature.”

This statute provides for the abolition of the legislative council of Prince Edward Island upon the dissolution of the house of assembly, by which it was passed, and provides that thereafter the legislature shall be composed of the Lieutenant-Governor and one house, to be called the legislative assembly; that the legislative assembly shall be composed of thirty members, who shall represent the fifteen electoral districts, fifteen of the members to be styled councillors, and fifteen to be styled assemblymen, each of whom shall be elected, the qualification of electors entitled to vote for councillors being different from the qualification of electors entitled to vote for assemblymen.

A provincial legislature has power, under the provisions of the British North America Act, from time to time, to amend the constitution of the province, except as regards the office of Lieutenant-Governor, and by virtue of that provision it was, in the opinion of the undersigned, competent for the legislature of Prince Edward Island to abolish the legislative council, and to establish a legislative body constituted as set forth in the statute under consideration.

The undersigned calls attention, however, to section 159 of the statute, which provides as follows :—

"No change shall hereafter be made in the proportion of councillors who shall sit in the legislative assembly, or in the qualification of electors entitled to vote for such councillors, unless such change be agreed to by at least two-thirds of the members of the legislative assembly for the time being."

This section appears to be intended to limit the right which the legislature constitutionally has of repealing or altering previous Acts. Such a provision does not appear to the undersigned to be in accordance with the principles of legislation, and might afford reason for the disallowance of the statute were it not that, in the opinion of the undersigned, the section is wholly inoperative and of no effect whatever as restricting any future legislation on the subject. The section itself may be repealed at any time by a statute passed in the ordinary way.

The undersigned desires further to direct attention to sections 8, 9, 10 and 11 of this statute, which are as follows:—

8. "The common jail of the county of Queen's shall be the prison of the legislature."

9. "The assembly shall have full power to commit to prison any person who shall, by resolution of the said assembly, be adjudged guilty of any contempt or breach of its privileges, and the serjeant-at-arms of the said assembly shall be the officer to carry out any order of said assembly made under this section."

10. "It shall be the duty of the keeper of the common jail of the said county of Queen's, to receive into his custody and confine in such jail, all such persons as shall at any time be committed to such jail, under and by virtue of any warrant signed by the speaker of the assembly."

"All justices of the peace, sheriffs, deputy sheriffs, jailers, constables, and other officers shall aid and assist the said assembly whenever required so to do."

It has been established by many decisions that a local or colonial legislature does not, in the absence of express grant from the imperial parliament, possess punitive powers, and it is, in the opinion of the undersigned, not competent for such a legislature to confer upon itself, or one of its constituent bodies, powers such as those in question.

1. The undersigned would refer in this connection to a report of the Honourable Sir John A. Macdonald, dated 14th July, 1869, on a statute of Ontario (chapter 3 of 32nd Victoria), also to the report of the same minister on the same subject, dated the 22nd of October of the same year, and to the opinion of the law officers of Her Majesty's government on the statute of Ontario, before mentioned. Also to the report of the same minister on a statute of Quebec, chapter 41, of the same year, dated 3rd March, 1869. Also to a report of the same minister, dated 19th October, 1870, on another Quebec statute. Also, to another report of the same minister, dated 18th December, 1872, chapter 5 of 33 Victoria, on a British Columbia statute, No. 4, of 35 Victoria. Also, to a report of the Honourable Edward Blake, dated 13th November, 1876, on a statute of Nova Scotia, chapter 22 of 39 Victoria. Also to a report of the same minister, dated 13th October, 1876, on a statute of Ontario, chapter 9, of 39 Victoria. Also to the report, dated 21st August, 1874, of the Honourable T. Fournier, on a statute of Manitoba, chapter 2, of 36 Victoria.

The invalidity of enactments of this character seems to be so well established, that little injury is likely to result from your Excellency refraining from disallowance of this Act, while inconvenience of a serious character might result from disallowance, in view of the many other provisions which the Act contains.

The undersigned recommends that the Act be left to its operation, but that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Prince Edward Island for his information.

Respectfully submitted.

JON. S. D. THOMPSON,  
*Minister of Justice.*

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## PRINCE EDWARD ISLAND—57TH VICTORIA, 1894.

1ST SESSION—32ND GENERAL ASSEMBLY.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th January, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th December, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report upon the statutes of the province of Prince Edward Island, passed in the fifty-seventh year of Her Majesty's reign (1894) and received by the Secretary of State for Canada on the 12th day of July, 1894, as follows:—

The statutes, chapters 2, 3, 5 to 34, are unobjectionable and may be left to their operation.

As to chapter 1, intituled : "The Assessment Act, 1894," and chapter 4, intituled : "An Act to impose a Direct Tax on certain classes of Traders," the undersigned observes that their object is taxation for provincial purposes, the former provides for the payment of certain taxes in respect of land, and that the owner, occupier, and tenant shall be jointly and severally liable therefor. The latter statute, to which the attention of the undersigned has also been specially directed by the secretary of the Maritime Commercial Travellers' Association, provides that "every casual trader not permanently residing in the province, doing business within the province, commonly known as 'Commercial Travellers' and every person not permanently residing in the province, and who sells either for himself or any other person, any goods or merchandise in the province, or solicits or canvasses for orders either for himself or any other person for the sale, exchange or purchase of any goods, wares or merchandise within the province, either by the production of samples, photographs, catalogues, printed or written matter, or simply by word of mouth, without the production of samples, photographs, catalogues, printed or written matter, shall, before he or she enters upon the business of so selling any goods, wares or merchandise, or soliciting or canvassing for such orders, pay to the Provincial Treasurer of the province, an annual license fee or direct tax of fifteen dollars," and it is also enacted that upon payment of such license fee the Provincial Treasurer shall grant a license to the person paying it, authorizing him to sell goods within the province, which license shall remain in force for one year, and that any commercial traveller or person not permanently residing in the province, who shall sell any goods, or solicit orders therefor within the province, without having first paid such license fee and obtained such license shall, in the case of each sale of goods or solicitation of an order therefor, be liable to a penalty of \$200.

As to the former Act, the question may arise whether taxation which renders both the owner, occupier, and tenant of land liable for a tax, the amount of which is arrived at, having regard to the extent and value of the land so owned, occupied, or held under lease is not indirect and, therefore, *ultra vires* of a provincial legislature.

As to the latter statute, the question is also open whether the method of taxation thereby authorized is not indirect, and if so, whether the legislation could be upheld by reason of the power conferred upon provincial legislatures, to make laws in relation to "shop, saloon, tavern, and auctioneer and other licenses, in order to the raising of a revenue for provincial, local, or municipal purposes." There may also be room for consideration with regard to the validity of this statute, in view of the exclusive authority of parliament in matters of trade and commerce. These questions do not, however,



appear to the undersigned to call for further examination by your Excellency in Council, but are rather such questions as, having regard to the circumstances of the case, should be left for determination by the courts, at the instance of any person who may be interested in raising them. The undersigned, therefore, recommends that the two last named statutes be also left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the province for the information of his government.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

## PRINCE EDWARD ISLAND—58TH VICTORIA, 1895.

2ND SESSION, 38TH GENERAL ASSEMBLY.

*Petition of Mr. Wm. Sidney Smith to His Excellency the Governor General, re chapter 7.**To His Excellency the Earl of Aberdeen, Governor General of Canada.*

MAY IT PLEASE YOUR EXCELLENCY :

The humble petition of William Sidney Smith, of Charlottetown, in Queen's County; in the province of Prince Edward Island in the Dominion of Canada, the husband of Anne Smith, formerly Anne Winsloe, hereinafter mentioned.

Most respectfully sheweth :—

That the said Anne Winsloe being seized in fee of upwards of four thousand acres of land, in townships numbers twenty-four and thirty-three in Prince Edward Island, and in contemplation of a certain marriage between your petitioner and the said Anne Winsloe, by an indenture bearing date the twenty-second day of November, A.D. 1864, made between the said Anne Winsloe of the one part, your petitioner the said William Smith of the second part, and Edward Jarvis Hodgson and Joseph Hensley of the third part, the said land was settled and conveyed to the said Edward Jarvis Hodgson and Joseph Hensley as trustees, upon certain trusts therein mentioned, in favour of the said Anne Winsloe and issue of the said intended marriage.

That the said intended marriage was shortly afterwards solemnized and the rents, issues and profits of the said lands have ever since been received and paid, according to the trusts of the said marriage settlement.

That previous to, and before the passing of "The Land Purchase Act," 1875, Robert Robinson Hodgson of Charlottetown was, in pursuance of a power contained in the said marriage settlement, appointed a trustee in the place of the said Joseph Hensley.

That the Commissioner of Public Lands did not avail himself of the provisions and powers given him by the "Land Purchase Act, 1875," so far as regarded the lands comprised in the said marriage settlement.

That the legislature, of this province in the year 1876, after all the large estates of proprietors had been adjudicated upon under the provisions of "The Land Purchase Act, 1875," in order, amongst other things, to enable the Commissioner of Public Lands to compulsorily purchase the said lands comprised in the said marriage settlement, passed an Act to amend "The Land Purchase Act, 1875," which Act was disallowed by his Excellency the Governor General.

That the legislature of the province of Prince Edward Island at its late session passed an Act called "The Land Purchase Act, 1895," which is simply an Act to compulsorily take the said lands under the provisions of the Act of 1875, and only differs in effect from the Act of 1876, which was disallowed by his Excellency the Governor General, in this respect, that while the Act of 1876 was comprehensive enough to include all proprietary lands, the Act of 1895 is confined to the lands comprised in the said marriage settlement.

That the said Act of 1895 differs also in the mode of appointing the third arbitrator. Under the Act of 1875 the third arbitrator was appointed by his Excellency the Governor General of Canada, but under the Act of 1895, the third arbitrator is appointed by the Chief Justice of Prince Edward Island.

That the said Anne Smith is now in England attending to personal business requiring her personal presence, and on her behalf, and as one interested in said estate, your petitioner most respectfully asks your Excellency to refuse the royal assent to the said Act.

That the rents received from the lands which are now sought to be compulsory taken, amount to the sum of one thousand dollars per annum, and comprise the only source of income of the said Anne Smith, and form the only means of livelihood of your petitioner and the said Anne Smith, and her family.

Your petitioner most respectfully submits that the said Act of 1895, is subversive of the rights of property, and was passed at the instance of the tenants of the said lands who are of a very limited number, not exceeding in the whole 75, and is for the express purpose of interfering with, and annulling contracts entered into between those very tenants, or those through whom they claim, and the said trustees or their predecessors in title, and compelling the said trustees to give up the lands of the said Anne Smith.

Your petitioner respectfully prays that your Excellency may be pleased to disallow the said Act.

W. SIDNEY SMITH.

*Honourable Attorney General Peters to the Deputy Minister of Justice.*

CHARLOTTETOWN, PRINCE EDWARD ISLAND, 10th June, 1895.

SIR,—Referring to your communication of the 28th ultimo, inclosing me a petition from William Sydney Smith against the Act passed at the last session of our legislature, regarding the purchase by the government of Prince Edward Island of certain lands, intituled: "The Land Purchase Act, 1895;" in my reply to you dated the 1st instant, I stated that I desired to make some remarks with regard to it.

The petition against this Act is from William Sydney Smith, the husband of the person beneficially interested in the land in question, and this petition is filed by William S. Stewart, Q.C., his attorney. A similar petition was filed with the Lieutenant-Governor, asking him not to assent to the bill, but to reserve the same for the consideration of his Excellency the Governor General.

I would remark, in the first place, that the fact that Mr. Smith files the petition at all is very surprising to me, for the reason that the bill was brought into the legislature and passed through the house with his consent. He himself personally supplied me with the necessary information with regard to the particulars of the land, the subject of the bill, giving me the plans and all other documents which he had; and as the bill is in every respect the same as was originally intended, and as he was fully aware of its contents, it is difficult to understand why he should now attempt to have the Act disallowed.

If you will refer to the preamble of the statute, you will there see set forth the reason for the passage of the bill. I am well aware that a statute making it compulsory for any person to sell his property, should not be passed unless there is a good reason for it. In 1875, our legislature with the consent of the Governor General, concluded that a good and sufficient reason did exist in Prince Edward Island for compelling all landlords, who held estates of over a certain size, to sell such estates to the government at a rate to be settled by the court appointed by the statute. The general principle was then laid down that such compulsory sales should be made in all such cases. Now, whilst it would be wrong to attempt to extend the provisions of that Act to estates which did not originally come within the terms of that Act, I contend that it is right that the principle of the Act should be extended to every estate which it was originally intended to include. In this particular case, the Smith estate was such an estate as came within both the letter and the spirit of the Act of 1875; and it only escaped the operation of that Act by a mere technicality, namely the fact that in serving the notice which is required under the Act, it was served upon a person who at one time had been trustee of the estate but had resigned his position, the change of trustees being unknown to the government solicitor. The object of this Act is therefore not to include any



estate that was not originally within the scope of the Act of 1875, but merely to remove technical objection in order that the act may apply.

There is an analogy between this bill and the Act of 1876, which was not allowed by the Governor General in Council. That bill contained many clauses, and many provisions relating to matters then actually in litigation, which made the bill objectionable.

The objection taken that the bill does not provide for exactly the same mode of appointing the arbitrator as the old Act, I submit ought not to have any weight. Under the old Act, the Governor General was authorized to appoint the third arbitrator. At that time the question of landlord and tenant in this province was one of very great public interest, and the people were so excited over the matter that it was considered advisable to ask the Governor General in Council to depart from their ordinary course, and to act in a merely provincial matter, the reason being that a commissioner chosen by the Governor General in Council would naturally be a person removed from all feeling, upon the matter which was then in dispute in the province. And I think there was then a very general understanding that the Governor General, in asking that appointment, should choose some person from England, which, as a matter of fact, he did.

The excitement upon this matter, I need hardly say has long ago died out. The reason for asking the Governor General to interfere has ceased to exist, and we therefore deem it quite sufficient to ensure the appointment in the hands of the Chief Justice of the province. I think that as the matter has now dwindled down to a comparatively small one, the substitution of the Chief Justice for the Governor General does not really affect the question.

The petitioner also says that this estate provides nearly her whole income. I cannot see what effect this has, because as a matter of fact, we propose to give her a sum of money, which will be sufficient to give her the same income,—it may be more.

I may further state that the government in this case have already appointed a commissioner to value the estate in question, that the Chief Justice has also appointed his, and that the trustees of the estate have also appointed their commissioner, and all parties seem perfectly willing that the commissioner should go on. I was to-day informed by one of the trustees that they intended to throw no obstacle in the way of the carrying out of the bill.

This is the last estate on the island that can come under the operation of the Act of 1875, and the purchase of this estate practically closes the land question in this island for ever. I sincerely hope that no action will be taken, which will prevent this from being done. The trustees of the estate do not wish to object. Mr. Smith, as I stated before, actually assisted in having the bill drawn, and his opposition to it now is merely an afterthought. The petitioners will be placed in as good if not a better position by the compensation, than by the ownership of the land.

I have, &c.,

FRED. PETERS,  
*Attorney General.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th November, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd October, 1895.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report that he has examined the Acts passed by the legislature of the province of Prince Edward Island in the fifty-eighth year of Her Majesty's reign, (1895) chapters 1 to 6, 9 to 18, received by the Secretary of State for Canada on the 24th day of May, 1895, and he is of opinion that they are unobjectionable, and may be left to their operation.

The remaining Acts, chapters 7 and 8, are the subject of a separate report.

The undersigned also recommends that if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Acts, be sent to the Lieutenant-Governor of the province for the information of his Government.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 5th November, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd October, 1895.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to submit his report upon the following statutes of the legislature of the province of Prince Edward Island, 58 Vic., (1895), which were assented to on the 19th day of April, 1895, and received by the Secretary of State for Canada, on the 24th day of May, 1895.

Chap. 7. "The Land Purchase Act, 1895."

There has been referred to the undersigned, a petition of William Sidney Smith of Charlottetown, praying that this act should be disallowed. A copy of the petition, together with the observations of the Attorney General of the province thereupon, are hereunto annexed, and made a part of this report.

The undersigned observes that the object of the statute is to enable the commissioner of public lands to acquire the township lands described in the marriage settlement of Anne Winsloe and William Sidney Smith, in pursuance of the provisions of "The Land Purchase Act, 1875," subject, however, to certain extensions of time and modification of the procedure contemplated by that Act.

The statute is one which it was perfectly competent for the provincial legislature to pass, and it appears to the undersigned that the grounds of complaint stated in the petition have been fairly answered by the Attorney General.

The means provided for ascertaining the compensation to be paid to the trustee of the marriage settlement, appear to be such as to ensure a fair consideration of the claims of the estate.

The Act of 1876, passed by the provincial legislature in amendment of "The Land Purchase Act, 1875," which is referred to in the petition and which was reserved for the Governor General's assent, and from which such assent was withheld, was an act of a very different character from that in question. The acting Minister of Justice in reporting upon the Act of 1876, stated that

"Without giving weight or consideration to any great extent to the allegations in the petitions, which are unsupported by any actual proof, he is of opinion that the reserved bill is retrospective in its effects: that it deals with rights of parties now in litigation under the Act which it is supposed to amend, or which may yet fairly form the subject of litigation; and that there is an absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of 1875.

"He therefore recommended that the bill should not receive the assent of the Governor General in Council."

None of the objections thus stated would apply to the present Act.

The undersigned is of opinion, therefore, that the Act might properly be left to its operation.

Chap. 8. "An Act respecting the Commissioner of Public Lands."

The undersigned has received a letter from Mr. Richard Hunt, of Summerside, Prince Edward Island, stating that section 7 of this Act seriously affects the titles of many farms in the province:—that hundreds of farmers claim to have held their farms for twenty-one years or more, who never attorned to either the landlord or the Government, who purchased from him under the Land Purchase Act: that these people in some instances had borrowed money on mortgages upon their holdings, and are willing to

submit the justice of their claim to the ordinary courts of law, but protest against *ex-parte* legislation which prejudices their case, and

The preamble of the Act is as follows:—

“Whereas, nearly all the township lands formerly held by proprietors in this province, have from time to time been purchased by the government of Prince Edward Island, and are now vested in the commissioner of public lands, subject to the provisions of the various Acts from time to time passed respecting the same; and whereas such township lands were acquired by the government of Prince Edward Island for the purpose of changing the leasehold tenures through this island into freehold estates, and also for the purpose of benefiting equally all the tenants through the province; and it is just and equitable that so far as possible all the tenants so benefited should pay fairly towards reimbursing the government for the sum of money expended for the said purposes; and whereas at the time said lands were purchased, certain parts thereof were in the occupation of tenants, squatters, or other occupiers who had not at the time the government so purchased the lands, obtained by possession or otherwise a freehold estate in the lands so held by them, and such persons, although as a matter of fact, benefited by the purchase of the freehold so made by the government as aforesaid, have not up to the present time repaid to the commissioner of public lands any part of the money expended for the purchase of their lands; and whereas when the said township lands were so acquired from time to time by the government as aforesaid, a considerable portion of the lands so acquired were vacant, and parts of such vacant lands have since been taken up and occupied by persons who have not attained or paid to the commissioner of public lands, any sum of money for the purchase thereof; and whereas there is a considerable portion of the lands so purchased by the commissioner of public lands as aforesaid, that are supposed to be vacant, but which may be claimed by persons whose names are unknown to the commissioner of public lands, and a doubt existing as to whether the land is vacant or not, renders it impossible for the commissioner of public lands to deal with intending purchasers of such lands; and whereas the present procedure for compelling the payment of a fair amount of purchase money for lands so situated as above recited is cumbersome and costly, and it is advisable to pass legislation to facilitate and cheapen the collection of such purchase money and the obtaining of titles by purchasers from the said government;

It is then enacted that the purchase money calculated by the commissioner shall constitute a first lien and charge upon the lands purchased; and that the lien may be enforced by bill in chancery at the suit of the commissioner of public lands.

Section 7 which is objected to, is as follows:—

“It is declared that the amount due the commissioner of public lands for the purchase of any land held by him as aforesaid, may be recovered, notwithstanding that proceedings have not been taken for the recovery of the sum for twenty years after the right to recover the sum accrued; and further, that the statute regarding the limitation of actions shall not be considered as ever having applied to such claims. But nothing herein contained shall in any way affect the titles obtained by possession before the lands in question became vested in the commissioner of public lands.”

It does not appear to the undersigned that this section is more than declaratory of the law as it previously stood. At most it merely affects the operation of the statute of limitations with regard to the recovery of the purchase money of lands which have been vested in the commissioner of public lands, and it is declared that the titles obtained by possession before the lands in question became vested in the commissioner shall not be affected by the statute. The subject being one as to which legislative authority has been committed to the provincial legislature, and as it does not appear that the enactment in itself is unjust, the undersigned considers that the statute should be left to its operation.

The undersigned, therefore, recommends the power of disallowance vested in your Excellency should not be exercised with regard to the two statutes herein referred to.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*



## NORTH-WEST TERRITORIES LEGISLATION.

*Memorandum with regard to the Legislation of the North-west Territories.*

None of the Ordinances of the North-west Territories passed prior to 1878 are in force. Those of 1877 were pronounced *ultra vires* by the then Minister of Justice, and were never printed. At the suggestion of the minister they were repealed and re-enacted since, excepting Nos. 5 and 12.

The Ordinances in force were those of 1878 (excepting No. 9 repealed by No. 7 of 1881), 1879 and 1881.

## NORTH-WEST TERRITORIES, 1881.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th June, 1882.*

DEPARTMENT OF JUSTICE, OTTAWA, 13th June, 1882.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the thirteen Ordinances passed by the council of the North-west Territories, in the year 1881, and finds them free from objection. He, therefore, recommends that the Ordinances Nos. 1 to 13, be left to their operation.

A. CAMPBELL,

*Minister of Justice.*

## NORTH-WEST TERRITORIES, 1883.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 30th November, 1883.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th November, 1883.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Ordinances passed by the Lieutenant-Governor of the North-west Territories in Council, at a legislative session, formally opened on the 22nd day of August, and closed on the 4th day of October last, begs leave to report :

By the 9th section of the North-west Territories Act, 1880 (43rd Victoria, chap. 25), it is provided that—

“The Lieutenant-Governor in Council, or the Lieutenant-Governor, by and with, the advice and consent of the legislative assembly, as the case may be, shall have such powers to make Ordinances for the government of the North-west Territories, as the Governor in Council may, from time to time, confer upon him ; provided always that such powers shall not at any time be in excess of those conferred by the ninety-second and ninety-third sections of ‘The British North America Act, 1867,’ upon the legislatures of the several provinces of the Dominion.

“2. Provided also, that no Ordinance to be so made shall (a) be inconsistent with or alter or repeal any provisions of any Act of the parliament of Canada in the schedule to this Act, or of any Act of the parliament of Canada, which may now, or at any time hereafter, expressly refer to the said Territories, or which, or any part of which may be at any time made by the Governor in Council, applicable to, or declared to be in force in the said Territories, or (b) impose any fine or penalty exceeding one hundred dollars.”

On the 26th day of June, 1883, the Governor in Council conferred upon the Lieutenant-Governor of the North-west Territories in Council, or with the advice of the legislative assembly (as the case may be) power to make Ordinances for the government of the North-west Territories in respect of the subjects following, viz. :—

1. The establishment and tenure of territorial offices, and the appointment and payment of territorial officers.

2. The establishment, maintenance, and management of prisons in and for the North-west Territories.

3. Municipal institutions in the Territories, subject to any legislation by the parliament of Canada heretofore or hereafter enacted.

4. The issue of shop, auctioneer and other licenses, except licenses for the sale of intoxicating liquors, in order to the raising of a revenue for territorial or municipal purposes.

5. The solemnization of marriage in the Territories.

6. The administration of justice including the constitution, organization and maintenance of territorial courts of civil jurisdiction.

7. The imposition of punishment by fine, penalty or imprisonment for enforcing any territorial Ordinances.

8. Property and civil rights in the Territories, subject to any legislation by the parliament of Canada on these subjects.

9. Generally all matters of a merely local or private nature in the Territories.

By the 11th Section of the North-west Territories Act, 1880, it is provided as follows, viz. :—

“An authentic copy of every such Ordinance shall be mailed for transmission to the Secretary of State, within thirty days after its passing, and if the Governor in Coun-

cil at any time within one year after its receipt by the Secretary of State thinks fit to disallow the Ordinance, such disallowance being signified by the Secretary of State to the Lieutenant-Governor, shall annul the ordinance, from and after the date of such signification, and the Ordinances so made and all Orders in Council disallowing any Ordinances so made, shall be laid before both houses of parliament as soon as conveniently may be after the making and enactment thereof respectively.

No. 1. "An Ordinance respecting Infectious and Contagious Diseases of Domestic Animals," makes it unlawful for owners of cattle affected with any contagious disease to allow them to run at large, and provides for the herding of cattle so affected, and for the killing of cattle so affected, and the burning of their bodies after inquiry, and on an order made by a stipendiary magistrate or by two justices of the peace.

The legislation of parliament on this subject is found in "The Animal Contagious Diseases Act, 1879," which, by proclamation of 21st September, 1883, was made applicable to the North-west Territories. The first seven sections of that Act are in force at all times, whether Orders in Council under the Act are made or not.

This Ordinance is similar to chapter fifty-two (52) of the Consolidated Statutes of Manitoba, intituled: "An Act respecting Infectious and Contagious Diseases of Domestic Animals," first passed in 1879, and allowed to go into force without remark.

As an Act of local legislature it could only be supported as an Act dealing with a matter of local or private nature in the province, not coming within the enumerated classes of section ninety-one (91) of the British North America Act.

The undersigned cannot say that the Ordinance in question is clearly inconsistent with, or that it distinctly alters, or repeals any provision of "The Animal Contagious Diseases Act, 1879." It rather makes additional provisions in the same direction, namely the killing of cattle infected by contagious disease. In that view the question of its disallowance becomes rather a matter of policy, and the undersigned recommends that the views of the Minister of Agriculture be obtained before action is taken in respect of the ordinance.

No. 2 is "An Ordinance respecting Municipalities." It makes provision for the incorporation of towns, cities and other municipalities, for the election of councillors, the appointment and payment of municipal officers, the levying and collecting of rates, the making of by-laws in respect of certain matters, in respect of which municipalities in the several provinces have power to make by-laws. Giving the expressions used in the Order in Council as defining the legislative authority of the Lieutenant-Governor of the North-west Territories in Council, as large a meaning as they have in the British North America Act, the undersigned is of opinion that this Act taken as a whole is within the legislative authority of the Lieutenant-Governor in Council.

The undersigned is of opinion, however, that the 3rd paragraph of section 49 should be amended. It provides, among other things, that a person occupying property of the Crown in other than an official capacity, shall be assessed in respect thereof. That is taxing the property in an indirect way, and the provision is consequently, in conflict with the 125th section of the British North America Act. It is probable that a tax can be levied on an occupant of Crown property in respect of any interest, such as a leasehold interest which he has in the property, but the property is not liable to tax.

The words 'the benefit of trade and commerce' should be struck out of the 23rd paragraph of the 147th section.

No. 3. "An Ordinance to amend the Administration of Civil Justice Ordinances, 1878 and 1879," repeals section 1 of the ordinance of 1878 respecting the administration of civil justice, and substitutes therefor a section, by which the North-west Territories are divided into four judicial districts. Amendments of the Ordinances of 1878 and 1879, and additional provisions relating to procedure in the district courts, are also made by this Ordinance. Assuming that there is no objection to the division of the Territories into the four districts, he sees no objection to this ordinance.

No. 4. "An Ordinance respecting Partnerships," makes provision for the registration of co-partnerships and business firms. Acts similar to this are in force in several provinces. (*See* Rev. Stat. Ontario, chap. 123; Consol. Stat. New Brunswick, chap. 97, and Consolidated Statutes Manitoba, chap. 17.)



No. 5. "An Ordinance for the relief of Indigent Children," makes provision for the authorities of schools and orphanages maintained by religious bodies or voluntary subscription, receiving into their institutions and educating, and caring for, male children under sixteen, and female children under fourteen years of age. In certain cases the stipendiary magistrates or two justices, make orders for sending destitute children without houses or guardianship to any such institution as will receive them. Provisions are made so that the child be sent to an institution under the control of that religious body to which it naturally belonged, also for the inspection of the institution. Other necessary safeguards are provided.

No. 6. "An Ordinance to prevent the profanation of the Lord's Day," is quite in accordance with the law in force in other provinces. All being based on the statute passed in the 29th year of the reign of His Majesty Charles II., chaptered seven (7).

No. 7. "An Ordinance authorizing the appointment of Notaries Public," repeals No. 8 of 1878, which authorized the appointment of notaries, but made no other provision. The present Ordinance, in addition, defines in a general way the powers of a notary, and fixes a fee for his commission. Acts similar to this Ordinance are in force in other provinces, and while the undersigned is of opinion that notaries are officers whom the Governor General could appoint, he thinks it is more convenient to leave the exercise of this power with the local authorities, under their local Acts.

The undersigned, therefore, recommends :—

1. That ordinance No. 1 respecting "Infectious and Contagious Diseases of Domestic Animals," be referred to the Minister of Agriculture for his opinion as to whether or not it should be left to its operation.

2. That the remaining Ordinances, Nos. 2 to 21, both inclusive, be left to their operation.

3. That the substance of that part of the report which deals with Ordinance No. 2 ("An Ordinance respecting Municipalities"), be communicated to the Lieutenant-Governor of the North-west Territories with a view to the amendment of the ordinance.

All of which is respectfully submitted.

A. CAMPBELL,  
*Minister of Justice.*

## NORTH-WEST TERRITORIES, 1884.

*His Honour the Lieutenant-Governor to the Hon. the Secretary of State.*

LIEUTENANT GOVERNOR'S OFFICE, REGINA, 2nd February, 1885.

SIR,—Among the Ordinances passed at the last session of the North-west council, transmitted to your department on the 13th August last, there is one relating to schools, which I desire to bring under the special notice of the government.

The authority of council for passing this Ordinance is derived from section 10 of "The North-west Territories Act, 1880," but when the subject was under consideration, doubts were raised by some of the members, as to the power of the council to enact a measure on education, the provisions of which could be enforced in parts of the territories where no system of taxation exists. In view, however, of the urgent necessity of an Ordinance on the subject, applicable to the whole of the Territories, the present one was passed. Since its publication, in October last, over thirty applications have been made to me for organization under its provisions, and more are coming in by every mail. Of the number just mentioned, twenty-five are from parts of the territories where no system of taxation exists.

In view, therefore, of the importance of the subject, and the serious complications it would lead to, should the constitutionality of the Ordinance be raised, I think it would be well that the question be submitted to the Minister of Justice, and if doubts were found to exist as to the power of the council, in this respect, I would respectfully suggest that such doubts be removed by Act of parliament, in the manner done once before, with regard to the Ordinances of 1881, (*vide* chapter 28, 45 Victoria); or confirmed, if deemed necessary.

I have, &c.,

E. DEWDNEY,  
*Lieutenant-Governor.*

*Deputy Minister of Justice to Deputy Minister of the Interior.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th May, 1885.

SIR,—Referring to your letter of the 1st instant, I have the honour, by direction, to inclose a draft of a report to council on the subject of the reference to the Minister of Justice and the Minister of the Interior, of correspondence respecting the School Ordinance, passed, under the 10th section of "The North-west Territories Act." If the draft is satisfactory to the Minister of the Interior, the Minister of Justice will be glad to sign it with him.

I have, &c.,

GEO. W. BURBIDGE,  
*Deputy Minister of Justice.*

## DEPARTMENT OF JUSTICE, OTTAWA, 5th May, 1885.

*To His Excellency the Governor General in Council :*

The undersigned, to whom was referred a copy of a despatch from the Lieutenant-Governor of the North-west Territories, dated 2nd April last, with reference to the Ordinance respecting schools, passed under the 10th section of "The North-west Territories Act, 1880," and stating that doubts existed as to the authority of the North-west council to make the Ordinance, respectfully report that in their opinion, it is desirable to so amend the 10th section as to remove all doubt as to the authority of the North-west council to enact such an Ordinance.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 15th August, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th August, 1885.

*To His Excellency the Governor General in Council :*

The undersigned having had under consideration the Ordinances passed by the Lieutenant-Governor of the North-west Territories in council, at the session held in the year 1884, has the honour to report :—

1. That having carefully considered the Ordinances, the numbers and titles of which are stated in the annexed schedule, he is of opinion that they should be left to their operation.

2. By ordinance No. 4, intituled : "An Ordinance respecting Municipalities," "The North-west Municipal Ordinance, 1883," is repealed, and other provisions made on that subject. In a report on the Ordinance of 1883, approved by your Excellency in Council, the undersigned had occasion to question the power of the council to enact the provision contained in the 3rd subsection of section 49, by which it was declared, among other things, that when crown property was occupied by any person in other than his official capacity, the occupant should be assessed in respect thereof. This provision, with an amendment to the effect that the property itself shall not be liable for the assessment, is contained in the 3rd subsection of section 77 of the Ordinance of 1884, the amendment being made to meet the objection referred to. It is doubtful, however, if the amendment goes far enough. The objection was not that the property would be liable to the assessment, for it clearly would not be, but that the property was being taxed indirectly, by means of an assessment levied against the occupant. The true distinction, in the opinion of the undersigned, is that the interest of the occupant, whatever it is, is liable to be assessed, but that the interest of the Crown is not liable. In the same report, the undersigned expressed the opinion that the words "trade and commerce" should be struck out of the 23rd paragraph of the 147th section of the Ordinance of 1883. These words are repeated in the 24th paragraph of the 177th section of 1884, but the Lieutenant-Governor, in a despatch dated 29th day of October, 1884, states that he will call the attention of his council to the suggestion."

3. By Ordinance No. 7 of 1884, intituled : "An Ordinance respecting Controverted Elections," provision is made for any voter contesting the election of a member to the North-west council. By the 3rd section it is provided that on receipt of the voter's petition and the sum of ten dollars, the Lieutenant-Governor shall cause the same, and a copy of all the books, papers and documents relating to the election complained of, certified by the clerk of the council, to be transmitted by registered letter to the clerk of the district court, whose office is nearest the residence of the returning officer at such election ; and by the 4th section it is provided that the Lieutenant-Governor shall not take the proceedings required of him by the next preceding section, after the expiration of two months from the receipt of the return of the returning officer, by the clerk of the council. If by the latter provision it is intended, that in case of an accidental



delay of two months in the transmission of the papers by the Lieutenant-Governor, the petitioner is to be deprived of his rights to contest the election, the fairness of the provision is more than doubtful, but if it is intended to provide that, unless the petitioner commences his proceedings within two months after the receipt of the returning officer, by the clerk of the council, the Lieutenant-Governor is not to act on the petition,—the section should be so amended as to make it clear that such is its meaning.

4. Ordinance No. 18, intituled: "An Ordinance to amend Ordinance No. 10, of 1879, intituled: 'An Ordinance respecting the Ordinances of the North-west Territories,'" contains a clerical error, the word "three" in the 1st line of section 1 being incorrectly used for the word "four."

5. By Ordinance No. 22, intituled: "An Ordinance to authorize corporations, and institutions incorporated outside the North-west Territories, to transact business therein," it is provided that any such institution, society or corporation, duly incorporated by law, and authorized by its statute, charter, or other instrument of incorporation or articles of association to lend money, or follow the business of insurance of any description in the territories (except the business of banking) may, on certain conditions, and paying an annual license fee of \$25, receive from the Lieutenant-Governor a license authorizing it to carry on business in the territories. The terms of this provision are general enough to exclude companies incorporated by, or licensed under the authority of the parliament of Canada, and in that case, at least, the undersigned is inclined to the opinion that the company would have the right to transact its business, without the license of the Lieutenant-Governor, but subject always to the municipal and other laws in force in the territories.

6. By Ordinance No. 31, intituled: "An Ordinance respecting preferential assignments," it is provided that certain conveyances given by persons in insolvent circumstances, shall be void against creditors. It is always difficult to decide whether a provision such as this relates to insolvency or to property and civil rights. No doubt such a provision in a Bankruptcy Act would be considered within the authority of the parliament of Canada, but whether in the absence of an Act of the parliament of Canada respecting bankruptcy or insolvency, the provision may be considered one within the legislative authority of a legislature, is a question not by any means free from doubt. If a provincial legislature could not enact such a provision, it is clear that the Lieutenant-Governor of the North-west Territories in council could not. The question is one, however, which, in the opinion of the undersigned, is best left for judicial decision.

If the report is approved the undersigned recommends:—

1. That the power of disallowance be not exercised in respect of the Ordinances Nos. 1 to 3, 5, 6, 8 to 17, 19 to 21, 23 to 27, 29, 30, 32 to 36, and that the Lieutenant-Governor of the Territories be so informed.

2. That Ordinances numbered 4, 7, 18, 22 and 31, hereinbefore referred to, be left to their operation, but that the substance of the observations made respecting them be communicated to the Lieutenant-Governor.

3. That Ordinance number 28, intituled: "An Ordinance exempting certain property from seizure and sale under execution," be disallowed.

All of which is respectfully submitted.

A. CAMPBELL,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 15th August, 1885.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th August, 1885.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon the Ordinance passed by the Lieutenant-Governor in Council of the North-west Territories, in the session held in the year 1884, numbered 28, and intituled: "An Ordinance exempting certain property from

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seizure and sale under execution," that Ordinance No. 8 of 1879, which contained the previous law on the subject, is repealed, and other provisions made. The fourth section of the Ordinance is as follows :

"No judgment or action for debts, contracted outside of the North-west Territories, shall be enforced against any settler coming into the said North-west Territories within six years of the date of his arrival; provided always that nothing herein shall prevent the collection of debts contracted outside the North-west Territories, for goods purchased, to be brought into the said territories, and provided further that nothing herein contained shall affect the rights of mortgages, and shall not apply to debts or contracts acknowledged in the said North-west Territories, provided nevertheless that the Ordinance respecting limitation of actions shall not run during the said six years."

In the opinion of the undersigned this provision is open to such serious objection, as an interference with the rights of creditors, that the Ordinance should be disallowed.

The undersigned, therefore, recommends that the said Ordinance, intituled : "An Ordinance exempting certain property from Seizure and Sale under execution," be disallowed.

All of which is respectfully submitted.

A. CAMPBELL,  
*Minister of Justice.*

*Order in Council disallowing the Act above mentioned, published in the Canada Gazette, on the 22nd day of August, 1885. Vol. XIX., No. 8, page 291.*

## NORTH-WEST TERRITORIES, 1885.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th May, 1886.*

DEPARTMENT OF JUSTICE, OTTAWA, 28th April, 1886.

*To His Excellency the Governor General in Council :*

The undersigned begs leave to report upon the Ordinances passed by the Lieutenant-Governor of the North-west Territories in Council, at a session begun and holden at Regina on the fifth day of November, and closed on the eighteenth day of December, 1885.

Having carefully considered the Ordinances Nos. 1, 2, 4 to 14, 17 to 22, the undersigned recommends that they be left to their operation.

The 151st section of Ordinance No. 3, intituled : "An Ordinance to amend, and consolidate as amended, the School Ordinance of 1884," is as follows:—

"151st. Any trustee who shall—

"1. Knowingly falsify, or cause or allow to be falsified, assessment rolls, voters' lists, school returns, school registers and minutes of meetings, or any of the records of the district, or who shall fail to deliver up such records when called upon by the chairman or duly appointed auditor :

"2. Misappropriate, or cause to be misappropriated, any of the funds, or real or personal property of the district ;

"3. Enter into, or have any interest in, any contract with the district, for which money is to be paid or work done : shall therefore be disqualified for fulfilling the term of office for which he was elected and shall be liable to a fine not exceeding fifty dollars."

The second paragraph of the above section appears to trench upon the Criminal Law. See 32-33 Victoria, chapter 21, sections 3 and 72.

The undersigned, however, recommends that this Ordinance be left to its operation, but that the attention of the Lieutenant-Governor be called to this section.

Ordinance 15 is an Ordinance to amend, and consolidate as amended, Ordinance No. 1 of 1883, intituled : "An Ordinance respecting infectious and contagious diseases of domestic animals," and Ordinance No. 15 of 1884, intituled : "An Ordinance to amend Ordinance No. 1 of 1883 respecting infectious diseases of domestic animals."

The subject of infectious and contagious disease of domestic animals is one that has been from time to time legislated upon both by the parliament of Canada and by the legislatures of the provinces. Probably it has been considered that such legislation is authorized by the 95th section of the British North America Act, 1867, by which it is provided that in each province the legislature may make laws in relation to agriculture in the province, and that Parliament may make laws in relation to agriculture in all or any of the provinces, the law of the legislature on that subject having effect, as far as it is not repugnant to the act of the parliament of Canada.

The undersigned recommends that this Ordinance be referred to the Minister of Agriculture, and if it be not found to be in conflict with any Act of the parliament of Canada on the same subject, that it be left to its operation.

Ordinance No. 16 purports to be "An Ordinance to amend Ordinance No. 24 of 1884, intituled : 'An Ordinance to amend and consolidate as amended the several Ordinances respecting Fences.'"

It is evident that Ordinance No. 29 of 1884 is intended, and that No. 24 is a clerical error.

The undersigned recommends that the Ordinance be left to its operation, and that the attention of the Lieutenant-Governor be called to this clerical error with a view to its amendment.

JNO. S. D. THOMPSON,  
*Minister of Justice.*



*Hon. the Minister of Justice to His Honour the Lieutenant-Governor.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd November, 1886.

(Telegram.)

On looking again at Ordinance No. 8, of 1885, I think I should advise government to disallow it, unless paragraphs 9 and 10 of section 1 are repealed, as ample provision appears to have been made by 41 Victoria, chapter 15. Please answer.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*His Honour the Lieutenant-Governor to the Hon. the Minister of Justice.*

10th November, 1886.

(Telegram.)

Council considers Homestead Act of 1878 imperative in Territories at present, there being no registry of title to lands and no certificate of title. Am writing fully and sending resolution passed by my executive on the subject.

E. DEWDNEY,  
*Lieutenant-Governor.*

*His Honour the Lieutenant-Governor to the Hon. the Minister of Justice.*

GOVERNMENT HOUSE, REGINA, N.-W. T., 11th November, 1886.

SIR,—Confirming my telegram of yesterday's date, I have now the honour to transmit you herewith copy of a report made by a sub-committee of the North-west council, composed of the stipendiary magistrates who were appointed to consider and report upon your telegram of the 4th instant, regarding Ordinance No. 8, of 1885.

I also inclose copy of a resolution passed on the 10th instant at an executive meeting of my council with reference to the same subject.

I have, &c.,

E. DEWDNEY,  
*Lieutenant-Governor.*

*Copy of Report of Sub-Committee of North-west Council.*

COUNCIL CHAMBER, REGINA, N.-W. T., 10th November, 1886.

The sub-committee appointed yesterday at an executive sitting of the North-west council, to consider and report upon a telegram, dated 4th November, 1886, received from the Hon. the Minister of Justice, with reference to Ordinance No. 8, of 1885, begs leave to report:—

That in their opinion the Dominion Act, 41 Victoria, chapter 14 has been hitherto, and now is, and will be in operation in the Territories until the 5th January, 1887, for the following reasons:

1. Section 1 of said Act requires the registration of homesteads in the "office for the registry of titles to lands," and your committee submits that no such office is in existence, or provided for, until the Act 49 Victoria chapter 26, comes into force on the 1st January next.

2. When registration is effected, as provided by the 8th section of the said Act, the registrar has to enter a memorial in the register book, and to endorse upon the certificate of title "Registered as a Homestead," and your committee submits that at present no provision exists for certificates of titles or memorials, and that for several months after the Act 49 Victoria, chapter 26, comes into force, it will be impossible for parties generally throughout the North-west Territories to take advantage of its provisions.

It may be added that very few copies of the Dominion Acts for the year 1878 are to be found in the Territories, and their provisions are consequently but little known by the general public.

H. RICHARDSON,  
*Chairman.*

*Copy of Resolution passed by the Council of the North-west Territories in Executive, on the 11th November, 1886.*

*Resolved,* That this council in executive in addition to the report of the Civil Justice Committee, with respect to the legal effect of the Act 41 Victoria, chapter 15, desires to urge upon the attention of the government the following serious considerations.

1. That in the past few years our settlers, animated with the hopes of good crops, and the desire to improve their lands, were induced to buy large quantities of agricultural implements on credit.

2. That owing to the bad crops of this year and former years, these hopes have been disappointed, and large numbers of judgments have been obtained against settlers for these claims and others, amounting to upwards of 600, and unless the settlers are protected by clauses similar to the ones objected to, great hardship will be entailed on them, and many, we are afraid, will be compelled to leave the country, or else be placed in such a position, as to be unable to take advantage of good seasons, which we and they still hope are in store for us.

*Deputy Minister of Justice, to Secretary, Lieutenant Governor of North-west Territories.*

DEPARTMENT OF JUSTICE, OTTAWA, 14th March, 1887.

*Re* North-west Ordinance No. 8, 1885, intituled: "An Ordinance exempting certain property from seizure and sale under execution."

SIR,—With reference to previous correspondence on this subject, I have now the honour, by direction, to state for the information of the Lieutenant-Governor in Council, that the minister is of opinion that this Ordinance should be repealed at the next session of the council of the North-west Territories.

I am to draw your attention to the fact that the objection taken to this repeal by the Civil Justice Committee, that the homestead exemption could not be effectually applied until the 1st January, 1887, has now no force.

The further objection that the homestead exemption is not widely known could be remedied fully by such publication as the council of the North-west Territories might see fit to make, or by having its provisions recited in the repealing Ordinance, or by one of these methods.

I am to add that so much importance is attached to this matter by the Minister that, unless the repeal is made by the council of the North-west Territories, he will probably be obliged to introduce a bill on the subject into the Dominion parliament. The necessity for action in the matter by parliament is to be deprecated, as it will give so great prominence to the exceptional exemptions, which have been sought for by the people of the North-west Territories.

I have, &c.,

GEO. W. BURBIDGE,  
*Deputy Minister of Justice.*

## NORTH-WEST TERRITORIES, 1886.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 20th September, 1887.*

DEPARTMENT OF JUSTICE, OTTAWA, 12th September, 1887.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report upon the Ordinances passed by the Lieutenant-Governor in Council of the North-west Territories in the session held in October and November, 1886.

By Ordinance No. 2, intituled : "An Ordinance respecting the Administration of Civil Justice," certain fees are allowed to the judges on every grant of probate of letters of administration and also on the appointment of guardians.

The principle of allowing fees to judges, the undersigned thinks is bad, and one which should not be given effect to in the Territories upon the establishment of the Supreme Court there. In passing the salaries of the judges of the Territories, parliament has granted the same salary as the judges receive in the province of Manitoba and in the provinces of Nova Scotia and New Brunswick. There would, however, the undersigned thinks, be no objection to the collection of such a fee as this, the same to form part of the general revenue of the Territories.

The undersigned recommends that the attention of the Lieutenant-Governor be called to this matter, with a view to the amendment of this Ordinance.

By Ordinance No. 3, intituled : "An Ordinance respecting the incorporation of Joint Stock Companies by Letters Patent," provision is made for incorporation by the Lieutenant-Governor by letters patent under the seal of the North-west Territories, of companies, for any of the purposes or objects, to which the legislative authority of the council or the legislative assembly, as the case may be, of the North-west Territories, extend.

By the Order in Council of the 7th July, 1887, the Lieutenant-Governor, by and with the advice and consent of the legislative assembly of the North-west Territories, as the case may be, is given power to incorporate companies with territorial objects with the following exceptions :—

(a.) Such companies as cannot be incorporated by a provincial legislature.

(b.) Railway, tramway, steamboat, canal transportation, telegraph and telephone companies.

(c.) Insurance companies.

No. 9 is intituled : "An Ordinance to incorporate companies for the establishment of Cemeteries."

Section 29 of this Ordinance touches upon the criminal law.

The undersigned recommends that the attention of the Lieutenant-Governor be called to it with a view to repealing subsections 1, 2 and 5 of section 29.

The undersigned recommends that, for the present action be deferred in respect of Ordinance No. 2 and Ordinance No. 9, and that the other Ordinances Nos. 3 to 8, and 10 to 21 be left to their operation, and also that the substance of this report be communicated to the Lieutenant-Governor of the North-west Territories.

All of which is respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*



## NORTH WEST TERRITORIES, 1887.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th September, 1888.

*To His Excellency the Governor General in Council :*

The undersigned having carefully considered the Ordinances passed by the Lieutenant-Governor of the North-west Territories in Council, in October and November, 1887, and numbered 1, 3 to 8, 10 to 25, has the honour to recommend that they be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 2nd October, 1888.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th September, 1888.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the following Ordinances, passed by the Lieutenant-Governor in Council of the North-west Territories, in the session held in October, 1887, namely, Nos. 2 and 9.

No. 2. "An Ordinance respecting schools."

Section 65 of this Ordinance provides :—"If any trustee or other official of a school knowingly signs a false report, or if any teacher keeps a false register, or makes a false return, with a view of obtaining a larger sum than the just proportion of school moneys coming to such school, such trustee, official, or teacher, shall, for each offence, be liable to a fine of not less than \$50."

In the opinion of the undersigned, this section touches upon the criminal law. The offence in respect of which provision is made, being punishable under the provisions of the Canadian criminal law, Sec. 7, and Sec. 46 of chap. 165 of the Revised Statutes respecting forgery.

Chapter 9. "An Ordinance to amend Ordinance No. 3 of 1886," intituled : "The Companies' Ordinance."

Sections 19, 20, 21 and 22 of this Ordinance also, in the opinion of the undersigned, conflict with the provisions of the criminal law. The undersigned has in previous reports frequently called attention to the objectionable character of this legislation and in several instances enactments similar to these have been repealed by a provincial legislature, at his suggestion.

The undersigned begs to recommend that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the North-west Territories, with a view to having the sections referred to in these two Ordinances repealed.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## NORTH-WEST TERRITORIES, 1888.

1ST SESSION—1ST LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th January, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th January, 1890.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report upon the Ordinances of the legislative assembly of the North-west Territories, passed in the session which closed on the 11th day of December, 1888, a certified copy of which Ordinances was received at the Department of the Secretary of State on the 11th day of January, 1889.

No. 1. "An Ordinance respecting the Revised Statutes of the North-west Territories."

Previous to the session above mentioned, a commission was appointed by the Lieutenant-Governor of the North-west Territories, for the purpose of revising and consolidating all existing Ordinances, and the legislation of this session includes the revision and consolidation of all the Ordinances theretofore passed by the Lieutenant-Governor in Council, and by the legislative assembly of the North-west Territories, with the exception of certain Ordinances relating to local and private matters. This Ordinance is an enactment in the usual form, giving effect to the Revised Ordinances.

The undersigned, in recommending that such Ordinance be left to its operation, is not to be understood as approving of the Revised Ordinances in detail, nor as expressing the opinion that all the provisions thereof, are within the authority of the legislative assembly.

He may observe, however, that care seems to have been taken in the revision, and that the legislation as a whole is remarkably free from any attempt to usurp authority in respect to subjects that are exclusively within the jurisdiction of the Dominion parliament.

The volume published contains sixty several Ordinances, in respect of only a few of which any observation appears necessary.

No. 8. "An Ordinance respecting Municipalities."

This Ordinance gives power to the council of any municipality to pass by-laws in relation to certain subjects which are under the control, to a greater or less degree, of the Dominion parliament, e.g. section 68, authorizes the council to pass by-laws for

(2.) The prevention of cruelty to animals.

(16.) Establishing municipal scales for weighing or measuring, and compelling the weighing or measuring thereon or thereby, of anything sold by weight or measurement in the public market, and establishing and regulating the fees to be paid for weighing or measuring on such scales, and compelling dealers in coal to weigh upon such scales, all coal sold by them, if requested so to do by the purchaser, at the purchaser's expense.

(28.) Regulating the keeping and transporting of gunpowder and other combustible or dangerous materials, preventing the defacing of private or other notices.

(31.) Licensing, regulating and governing transient traders and other persons who occupy premises in the municipality, &c., and for fixing the sum to be paid for a license, for exercising any or all of such callings within the municipality, and the time the license shall be in force.

(32.) Licensing hawkers, pedlars, billiard, pool and bagatelle tables, and bowling alleys, porters, water dealers or carriers, or common carriers, draymen, hackmen, omnibus drivers, and guides, and regulating the same.

(34.) Licensing livery stables, sale stables, refreshment houses, boarding houses, hotels, and places of public resort or accommodation for amusement, and private boarding or lodging houses, where at least four boarders or lodgers are kept, and

(36.) Regulating the assize of bread, and preventing the use of deleterious materials in making bread, and providing for the seizure and forfeiture of bread made contrary thereto, &c.

By-laws made in pursuance of this authority, may or may not be *ultra vires* of the council, according as they are consistent with, and framed to secure the enforcement of Dominion legislation on this subject.

Section 87 of this Ordinance is as follows :—

“The interest of any person or corporation in any lands, the fee of which is in the Crown, shall be liable to assessment.”

This, of course, remains subject to the limitation, resulting from exemptions conferred by the Dominion parliament.

Section 120 provides for an appeal to a judge of the Supreme Court of the North-west Territories in matters of assessment, and subsection 12 provides that the decision and judgment of the judge shall be final and conclusive in every case adjudicated upon.

This provision is, of course, subject to the right of the parliament of Canada to provide for an appeal to the Supreme Court of Canada.

Section 239 provides that :—

“In any case where a dispute arises between two municipalities, or between a person and a municipality, involving a claim for a payment of money or damages, or between two or more parties, for the surplus money in the hands of the municipality, in cases where property distrained for the payment of taxes has been sold for more than the amount of taxes and costs, either party to the dispute may require that the same be settled by arbitration.”

Subsequent sections furnish a practice for such references, including an appeal to a judge of the Supreme Court.

The undersigned would call attention to the unusual character of this legislation, which may prevent claims against municipalities from being pursued in the ordinary tribunals. It may be contended that this provision is *ultra vires*, inasmuch as it takes away from the Supreme Court of the North-west Territories, in part, the jurisdiction conferred upon that court by the North-west Territories Act : but the decision of that point may, without public inconvenience, be left to that tribunal.

No. 30. “An Ordinance respecting the incorporation of Joint Stock Companies by Letters Patent.”

Attention is called to section 80 of this Ordinance which contains legislation upon the subject of bills of exchange and promissory notes, and which may, therefore, be an infringement of the exclusive power of the Dominion parliament to legislate upon this subject.

No. 59. “An Ordinance respecting Schools.”

This Ordinance is substantially a re-enactment of the Ordinance respecting schools passed in 1887, to certain provisions of which the undersigned called the attention of your Excellency in a report dated the 18th September, 1888. The undersigned observes with satisfaction that certain clauses objected to in that report have been repealed in the Revised Ordinance.

The attention of the undersigned has been called to the following provision in this Ordinance, which, it is stated, operates disadvantageously to certain localities of the North-west Territories. Section 82 is as follows :—

“All the schools shall be taught, and instructions given in the following branches, viz. : reading, writing, orthography, arithmetic, geography, grammar, history of Great Britain and Canada, and English literature. Instruction shall be given during the entire school course, in manners and morals, and the laws of health, and due attention shall be given to physical exercises for the pupils, as may be conducive to health and vigour of body, as well as the mind, and to ventilation and temperature of the school rooms.



"It shall be incumbent upon the trustees of the schools organized under this Ordinance, to cause a primary course of English to be taught."

This provision appears to be within the powers of the assembly. Some complaints have been made that hardship may result from the enforced teaching of English in the public schools, but should such hardship be found to occur, there is no reason to doubt that it will be relieved by the action of the legislature, or other competent authority without reference to your Excellency.

The undersigned has, however, to call attention to another particular, in respect of which he finds that the Ordinance does not strictly conform to the requirements of the Act under which it was framed.

Section 14 of the North-west Territories Act (chapter 50, R.S.C.) provides, that Ordinances in respect of education may be made in the Territories, but stipulates that in such Ordinances it shall "Always be provided that a majority of the ratepayers of any district or portion of the Territories, by whatever name the same is known, may establish such schools therein as they think fit, and make the necessary assessment and collection of rates therefor, and also that a minority of the ratepayers therein, whether Protestant or Roman Catholic, may establish separate schools therein."

The Ordinance respecting schools does not contain the provisions that the statute requires it to contain, but merely contains the provision that the minority may establish a separate school in an organized public school district, thus placing the minority at the mercy of the majority, and only giving the minority the right to establish a separate school, if the majority think proper to organize a public school. It is necessary to point out that the provisions of the North-west Territories Act, before cited, cannot be abridged by the Ordinance, and must be considered as still in force, notwithstanding the restrictive terms of the Ordinance. In so far as it is attempted by the Ordinance to declare the meaning of the North-west Territories Act, the Ordinance fails of that purpose, and is objectionable, as being an interpretation, by an inferior legislative body of the acts of its superior.

The undersigned only refrains from recommending the disallowance of this Ordinance, in consequence of its being merely a re-enactment of an earlier Ordinance, which disallowance would not affect, and which was allowed to go into operation, probably because attention was not called to this provision. The undersigned has the honour to recommend that the Ordinance bringing these Revised Ordinances into effect, be allowed to go into operation.

The undersigned has also the honour to recommend that the following Ordinances, passed at the said session be also left to their operation, namely:—

No. 2. "An Ordinance for the abatement of nuisances and for the protection of public health outside Municipalities."

No. 3. "An Ordinance to enroll Thomas Christopher West as an Advocate of the Territories."

No. 4. "An Ordinance to enable Ernest Harold Scott to register as a medical practitioner of the Territories."

No. 5. "An Ordinance respecting the profession of medicine and surgery."

No. 6. "An Ordinance respecting the registration of births, marriages and deaths."

No. 7. "An Ordinance to amend Ordinance No. 5 of 1888, intituled, 'An Ordinance respecting the profession of Medicine and Surgery.'"

No. 8. "An Ordinance for granting to Her Majesty certain sums of money to defray the expenses of the public service of the Territories for the financial year ending 30th June, one thousand eight hundred and eighty nine, and for other purposes relating thereto.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## NORTH-WEST TERRITORIES, 1889.

## 2ND SESSION—1ST LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 8th January, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 3rd January, 1890.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to call the attention of your Excellency, to an Ordinance of the legislative assembly of the North-west Territories, which was assented to on the 22nd day of November last, and which was received at the Department of the Secretary of State on the 17th of December last, being No. 24 of 1889. This Ordinance is in amendment of subsection 6, of section 8, of chapter 1, of the Revised Ordinances of the North-west Territories, and relates to the administration of financial affairs in the Territories.

The power of the legislative assembly of the Territories to pass Ordinances is, of course, limited to such "as are not in excess of the power conferred by the 91st and "92nd sections of the British North America Act upon the legislatures of the several "provinces of Canada" and no such Ordinance can have validity if it is "inconsistent with, alters or repeals any provision of that Act or of any Act of the parliament of Canada in force in the Territories." This is provided by section 13 and by section 2, subsection 2 of the "North-west Territories Act" chapter 50, Revised Statutes of Canada.

These being the powers possessed by the North-west assembly the undersigned has now to state to your Excellency what the provision made by the parliament of Canada is, in relation to the subject on which the Ordinance now under review was made.

The Lieutenant-Governor of the Territories, having vested in him the administration of the government, by virtue of section 4 of the "North-west Territories Act" it is provided by an Act in amendment of the "North-west Territories Act" namely chapter 19, 1888, section 13, that the "Lieutenant-Governor shall select from among the "elected members of the legislative assembly, four persons to act as an advisory council, "in matters of finance, who shall severally hold office during pleasure, and the Lieutenant-Governor shall preside at all sittings of such advisory council, and have a right "to vote as a member thereof, and shall also have a casting vote in case of a tie."

It seems unnecessary, in the view which the undersigned takes of this subject, to consider, at present, a question which has given rise to some controversy in the Territories, namely whether the "matters of finance" which are mentioned in the section just quoted, include the administration of moneys appropriated by the parliament of Canada, as well as the revenues of the territorial government derived from local sources. It seems clear to the undersigned that the "matters of finance" which are so mentioned in that section, undoubtedly include the administration of the territorial revenues, which is one of the principal functions which the Lieutenant-Governor has to perform, by virtue of his office.

The appropriation made by the parliament of Canada being placed at the disposal of your Excellency, may be administered in various ways without being placed under the control of the Lieutenant-Governor, but the local revenues of the Territories are necessarily under his control, by virtue of the statutory provision which creates his office, and invests him with the administration of the government.

Being clearly of opinion, therefore, that the duty is imposed on the Lieutenant-Governor of appointing an advisory council on matters of finance, and that these matters

of finance, on which he has to be so advised, include the administration of the territorial revenues, the undersigned is obliged to call the attention of your Excellency to the fact that, in his opinion, the Ordinance above mentioned, (No. 24 of 1889), is inconsistent with the provisions of the Acts of the parliament of Canada relating to that subject.

By chapter 3 of the Revised Ordinance of the Territories it is provided as follows:—

Section 1. "All duties, revenues, licenses, fees, fines, penalties and moneys whatsoever of the Territories, over which the Lieutenant-Governor and legislative assembly have, or hereafter may have the power of appropriation, shall form one fund, to be called 'The General Revenue Fund,' to be appropriated for the public service of the territories, in the manner and subject to the changes hereinafter mentioned."

Section 2. "The said fund shall be permanently charged, subject to revision and audit, as may be directed by Ordinance, or order of the Lieutenant-Governor in Council, with all the costs, charges and expenses incident to the collection, management, receipt and disbursement thereof."

Section 4. "Unless the said fund be appropriated in detail by Ordinance, the Lieutenant-Governor in Council may, from time to time, appropriate said fund, or any portion thereof, for any purpose of public utility in the Territories, and a statement of such expenditure shall be laid before the legislative assembly at every successive session thereof."

Section 5. "The Lieutenant-Governor in Council may from time to time, determine what officers or persons it is necessary to employ for any of the purposes mentioned in this Ordinance, assign their names of office, prescribe their duties, grant salaries or pay for their services, make the necessary appointments and exact such securities from such officers and persons as may be deemed proper."

The words "Lieutenant-Governor in Council," which appear in this and in other of the Revised Ordinances, are declared by chapter 1, section 8, subsection 6, to mean "the Lieutenant-Governor, or person administering the government of the Territories for the time being, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the advisory council of the Territories."

It will, therefore, be seen that, prior to the passage of the Ordinance which is the subject of this report, the legislative assembly of the territories had declared, in effect, that the expenditure of unappropriated territorial revenues should be vested in the Lieutenant-Governor and the advisory council, established by the Act of parliament, of 1882, chapter 19, section 13.

The provisions of the Ordinances to that end were unnecessary, as the enactment of parliament, by vesting the administration of the government of the Territories in the Lieutenant-Governor, and by directing that he should appoint an advisory council to assist him in matters of finance, had already accomplished the purpose which the Ordinance just cited would achieve. The only practical effect of this ordinance would be that the Lieutenant-Governor and advisory council, under it, would receive the style of "Lieutenant-Governor in Council."

An important change, however, was made by the Ordinance now under review. The previous Ordinances as already shown were parallel to the legislation of parliament. They were unobjectionable, only as being of that character, but, by amending subsection 6, of section 8, of chapter 1, the legislative assembly has made the two lines of legislation diverge, and the legislation of the assembly has become inconsistent with that of parliament.

The Ordinance under review is in the following words:—

"Subsection 6, of section 8, of chapter 1, of the Revised Ordinances of the Northwest Territories is amended by striking out the last seven words thereof, and substituting therefor the following words:—'Two members of the legislative assembly, to be selected from time to time, by the assembly, and who shall hold office until their successors are appointed, and who, in the first instance, shall consist of the following members of the assembly, namely Thomas Tweed, Esquire, member for the electoral district of Medicine Hat, and John Ryerson Neff, Esquire, member for the electoral district of Moosomin.'"

The effect of this provision is, that on its coming into force, the "Lieutenant-Governor in Council," mentioned in the Ordinances of the Territories would mean, the Lieutenant-Governor "acting by and with the advice of or, by and with the advice and consent of, or, in conjunction with," Messrs. Tweed and Neff, or such other two members of the



legislative assembly as may be selected from time to time by the assembly. To the Lieutenant Governor and Messrs. Tweed and Neff, or to the Lieutenant-Governor and two members of the legislative assembly, to be selected by the assembly, is given by the operation of chapter 3, above cited, the control and expenditure of all territorial revenues which may not have been appropriated by the assembly.

It appears that there has been no appropriation by the assembly for the current year. Therefore (if the Ordinance now under review is to have effect) the administration of all the territorial revenues, for the current year at least, is given to the Lieutenant-Governor "acting by and with the advice of, or by and with the advice and consent of, or in conjunction with" Messrs. Tweed and Neff.

In all those important matters of finance, therefore, which relate to the administration of the territorial revenues during the present year, or any other year in which there may be no appropriation, or no complete appropriation, by the assembly, the Lieutenant-Governor is required to have the advice and consent of two members of the assembly, selected by the assembly.

The points in which the Ordinance is inconsistent with the statute of Canada above referred to are the following:—

The Ordinance requires the advisory council to be appointed by the assembly, the statute vests the appointment in the Lieutenant-Governor. The Ordinance requires the council to consist of two members, the statute requires four. The Ordinance requires the consent of both members of the council to every act of the Lieutenant-Governor, the statute implies that the Lieutenant-Governor may act on the advice of a majority, because it gives him a vote in the council, and the casting vote also in case of a tie. The tenure of office prescribed by the Ordinance is the pleasure of the assembly, while that prescribed by the statute is the pleasure of the Lieutenant-Governor.

It is obvious, therefore, that the Ordinance is not such as the assembly is empowered to make, in view of the provisions contained in section 13 of the "North-west Territories Act," chapter 50 of the Revised Statutes, which provides that "No such Ordinance shall be so made, which is inconsistent with, alters or repeals any provision of any Act of the parliament of Canada in force in the Territories."

It is equally obvious that two advisory boards, one constituted under the statute of 1888, and another under the Ordinance, cannot be established. The statute requires the Lieutenant-Governor to act with the advisory board established under the authority of parliament, and the Ordinance requires him to act only on the advice of two gentlemen appointed by the assembly.

The undersigned has, therefore, the duty of advising your Excellency that the Ordinance in question is inconsistent with the provisions of the "North-west Territories Act", and its amendment of 1888, and he therefore recommends that this Ordinance "No. 24 of 1889," assented to on the 22nd of November last, be disallowed, and that the disallowance thereof be signified by the Secretary of State to the Lieutenant-Governor of the North-west Territories.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Order in Council disallowing the Ordinance above mentioned, published in the Canada Gazette on the 18th January, 1890, Vol. XXIII., No. 29, page 1149.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 1st October, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st August, 1890.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon one of the Ordinances passed by the legislative assembly of the North-west Territories, in the year 1889, No. 11, intituled "An Ordinance to amend chapter 25 of the Revised Ordinances of the North-west Territories, intituled: 'The Game Ordinance'".

"The Game Ordinance" (cap. 25 of the Revised Ordinances of the North-west Territories, 1888) provides among other things, that :—

(2) "No elk, moose, cariboo, antelope, deer or their fawn, mountain sheep or goat, or hare shall be hunted, taken or killed, between the 1st day of February and the 1st day of September in any year."

(3) "No person shall fire at, hunt, take or kill in any year,"

(a) "Any snipe between the 1st day of May and the 15th day of August :

(b) "Any grouse, partridge, pheasant or prairie chicken between the 1st day of February and the 1st day of September.

(c) "Any kind of wild duck or wild goose between the 15th day of May and the 15th day of August."

(4) "No person shall at any time disturb, injure, gather, or take the eggs of any species of wild fowl."

(5) "No person shall hunt, trap or kill in any year.

(a) "Any mink, fisher or martin between the 15th day of April and the 1st day of November.

(b) "Any otter or beaver between the 15th day of May and the 1st day of October.

(c) "Any musk rat between the 15th day of May and the 1st day of November."

Section 16 provides that the provisions of the ordinance, except section 4, shall not apply to Indians in any part of the territories, with regard to any game actually killed for their own use only, and not for the purpose of sale or barter.

Ordinance No. 11 now under review alters the close seasons provided for in the original Ordinance, and it contains the following two sections :—

Section 7. "Section 16 of the said Ordinance (the section exempting Indians from its operation) is hereby repealed."

Section 8. "No person shall kill or take any buffalo in any part of the territories."

The undersigned is of opinion that, under the circumstances hereinafter detailed, this ordinance should be disallowed.

Prior to the acquisition of the North-west Territories by the Dominion of Canada the whole country with the exception of a small area, had never been surrendered by the Indians inhabiting the same. At the present time, however, almost all the territory south of the 52nd parallel of north latitude, has been divested of the Indian title by the operation of treaties known as Nos. 2, 4, 6 and 7. Each of these treaties, with the exception of No. 2, contains a provision guaranteeing to the Indians certain rights of fishing and hunting over the surrendered territory.

Treaties Nos. 4 and 7 contain the following covenant :—

"And further Her Majesty agrees that her said Indians shall have right to pursue their avocations of hunting, trapping and fishing throughout the tract surrendered, subject to such regulations as may from time to time be made by the government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, or other purposes, under grant or other right given by Her Majesty's said government."

Treaties Nos. 5 and 6 contain the following covenant :—

"Her Majesty further agrees with her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, subject to such regulations as may from time to time be made by her government of the Dominion of Canada, and saving and excepting such treaties as may from time to time be required or taken up for settlement, mining, lumbering, or other purposes by her said government of the Dominion of Canada or by any of the subjects thereof, duly authorized therefor by the said government."

It will be observed that in the treaties Nos. 4 and 7, the right of regulating the hunting and fishing is vested in "the government of the country, acting under the authority of Her Majesty, whereas in Treaties Nos. 5 and 6 such regulations are to be made by the government of the Dominion of Canada.

The undersigned is inclined to the opinion that the authority referred to in both cases is the Dominion government or parliament, but whatever doubts there may be as

to the meaning of the phrase "the government of the country acting under the authority of Her Majesty" there can be none as to the meaning of the phrase "Her government of the Dominion of Canada," and that the treaties contained in these words, purport to secure to the Indians the right to pursue their avocations of hunting and fishing, subject to any regulations made by your Excellency in Council.

The Ordinance now under review purports to regulate and control the avocations of hunting and fishing by the Indians, as well as by the other subjects of Her Majesty, and in so far as it relates to Indians, is a violation of the rights secured to them by the treaties referred to.

The undersigned does not consider it necessary to discuss the propriety of these regulations, or whether the Indians should be exempt from the regulations. It is sufficient to observe that the utmost care must be taken, on the part of your Excellency's government, to see that none of the treaty rights of the Indians are infringed without their concurrence.

The undersigned desires also to observe that may be doubtful whether the North-west assembly has authority to legislate in respect to hunting and fishing upon the public domain of Canada. He does not, however, deem it necessary to do more than call attention to this point, as bearing upon possible future legislation in the Territories, inasmuch as the Ordinance in question would lead to a violation of the terms of the treaties above referred to.

The undersigned respectfully recommends that the Ordinance in question be disallowed.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Order in Council disallowing the Ordinance above mentioned, published in the Canada Gazette on the 11th day of October, 1890. Vol. XXIV., No. 15, page 652.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 1st October, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 1st August, 1890.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon the following Ordinances passed by the legislative assembly of the North-west Territories in the year 1889.

No. 25. "An ordinance to amend chapter 41 of the Revised Ordinances of the North-west Territories, and,

No. 26. "An Ordinance to amend Ordinance No. 25 of 1889, intituled, an Ordinance to amend chapter 41 of the Revised Ordinances of the North-west Territories."

These are two Ordinances amending chapter 41 of the Revised Ordinances, 1888. "An Ordinance respecting the legal profession." That Ordinance provides:

Section 2. "Any of the following persons, upon production to the Lieutenant-Governor of a certificate from a judge of the Supreme Court, to the effect that he is entitled to be enrolled, and the payment of a fee of \$50.00 to the general revenue fund of the Territories, may be enrolled as an advocate in the said territories.

"1. Any person who has been duly called to the bar of any of the courts of Her Majesty's Dominions, or who has been admitted to practice as an attorney, advocate or solicitor in any of the said courts," and,

"2. Any British subject of the age of 21 years of good moral character, and who has served under articles and passed the examination prescribed thereby."

Section 1 of this Ordinance (chap. 41 of 1888) provides that only such persons as are enrolled as aforesaid shall be permitted to practice in the supreme or any other court of civil jurisdiction in the North-west Territories, or to issue any writ or process, or carry on or defend any action or proceeding therein.



The Ordinances now under consideration, however, make the following amendments.

Ordinance 25 of 1889, provides, among other things, that no person shall so act or practice the legal profession in the Territories, unless, besides being duly enrolled and qualified, he be a permanent resident of the Territories.

Ordinance 26 of 1889, merely saves the rights of those who, before the first day of January, 1890, were enrolled but who may not be permanent residents in the Territories, but even as to any such person it provides that he shall not be entitled to tax or collect any fee for his services.

The effect of this legislation is to prevent any member of the legal profession, resident outside of the Territories, from taking part in any legal business therein, no matter what their qualifications on their standing at the bar of any other province may be. In none of the older provinces of Canada is there any such legislation.

Members of the bar in one province are freely admitted, upon compliance with certain prescribed conditions, to practice at the bar of another province. In the Territories there would seem to be far greater reason for liberality in this respect, than in the provinces. The bar there has only very recently been organized. Some of those who have been admitted to it have been admitted on most liberal principles. The reasons which make it useful and reasonable that persons practising in one province should be permitted access to the bar of another under proper restrictions, would seem to apply with greater force in a country, where the population is yet scattered and sparse, where the members of the profession are not yet numerous, and where residents of the provinces may frequently have litigation, in which they may desire to have the assistance of their ordinary counsel.

Another consideration arises from the fact that the Supreme Court of the North-west Territories to which, by the Ordinances under review, access is to be refused to all practitioners in Canada who do not reside permanently in the Territories, is a court established and organized by the parliament of Canada. That parliament is the primary source of all its jurisdiction, and its judges and officers are appointed and paid under the authority of parliament. It seems to the undersigned that a rule as to access of advocates and other practitioners to that court, differing so essentially from that which exists elsewhere in Canada, should not become law without the approval of the parliament which has created, organized and maintained the court, especially when the rule is prejudicial to the interests of large classes of persons in the other provinces.

Section 4 of the first of the two Ordinances under review contains the provision that for any person not qualified to practice by enrollment and residence in the Territories, to attempt to practice shall be a contempt of court, and that such persons shall be incapable of recovering any fee or reward.

Section 5 is as follows:—

“5. Section 4 of said Ordinance is hereby amended by adding thereto, at the end thereof, the following words:

“And the Supreme Court, or (except as hereinafter otherwise provided) any judge thereof, shall possess and may exercise the same powers over and in respect of such advocates as, at the time of the passing hereof, is possessed by the Supreme Court of Judicature in England over and in respect of solicitors of the said last mentioned court.”

The undersigned repeats, as regards this section conferring such extensive powers, on the court, that it would seem better and more appropriate that such powers should be conferred by a statute of Canada, if that policy should meet the approval of parliament.

The undersigned therefore respectfully recommends that Ordinances numbers 25 and 26 of 1889, of the North-west assembly, assented to on the 22nd day of November, 1889, be disallowed.

JNO. S. D. THOMPSON,

*Minister of Justice.*

*Order in Council disallowing the Ordinances above mentioned published in the Canada Gazette on the 11th October, 1890. Vol. XXIV., No. 15, Page 651.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th November, 1890.*

DEPARTMENT OF JUSTICE, OTTAWA, 11th August, 1890.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report upon the following Ordinances of the legislative assembly of the North-west Territories, all of which were assented to on the 22nd day of November, 1889, and received by the Secretary of State on the 17th day of December last.

No. 10. "An Ordinance respecting the expropriation of lands."

This legislation is open to the following objections.

1. That it does not contain any provision for payment for land when expropriated.
2. It would seem more appropriate that the power to expropriate land for school purposes, should be vested in the trustees of the public school district in which the required lands are situated, particularly as under section 47 of "The School Ordinance" (chap. 59 Revised Ordinances) lands, when required, are vested in the trustees as a corporation.

3. The power of expropriation is vested in the "Lieutenant-Governor in Council" which means under section 8 of the interpretation Ordinance "The Lieutenant-Governor acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the advisory council of the said Territories." The advisory council, under the provisions of the Dominion statute in that behalf, only possesses such powers as have been conferred upon it by the Dominion parliament, under the provisions of 51 Vic. cap. 19, sec. 13. It may be that the legislative assembly can confer upon the advisory council, powers and functions beyond those mentioned in that section, but, if so, such powers and functions, and the mode of exercising them should be clearly defined in the Ordinance conferring them.

The undersigned respectfully suggests that the attention of the Lieutenant-Governor of the North-west Territories be called to this Ordinance, with a view to its being amended at a future assembly, in the meantime the undersigned recommends that the Ordinance be left to its operation.

No. 14, "An Ordinance respecting justices of the peace."

This Ordinance provides that every justice of the peace, before acting as such, shall subscribe to the oaths therein prescribed. The North-west Territories Act, section 64, provides that the Lieutenant-Governor may appoint justices of the peace for the territories, who shall have jurisdiction as such, throughout the same. The legislative assembly has no express jurisdiction to define the qualifications of, or prescribe the conditions, under which a person appointed by the Lieutenant-Governor may act as a justice of the peace, and it would appear that this Ordinance is an unauthorized limitation of the Lieutenant-Governor's powers, as expressed in the Dominion Act.

It is, however, desirable that a justice of the peace before entering upon his duties should take the oath in question, and in the view of the undersigned no public interest would be injured should the Ordinance be left to its operation, and he respectfully recommends the same accordingly.

No. 16. "An Ordinance respecting the personal property of married women."

The undersigned has the honour to recommend that the Ordinance be left to its operation.

No. 27. "An Ordinance to incorporate 'The Medicine Hat General Hospital'."

The undersigned would call attention on the fact that this Ordinance, while purporting to incorporate a company under the name of the "Medicine Hat General Hospital" does not, in terms, specify the object or the purposes of the incorporation. It is doubtless the case that the purpose is the carrying on of an hospital for the treatment and cure of the sick, but that object should be expressly stated in the Ordinance.

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The undersigned, while recommending that the Ordinance be left to its operation, would also recommend that the attention of the Lieutenant-Governor of the North-west Territories be called to the objection raised.

Humbly submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

NOTE.—*The Ordinances Nos. 1 to 9, 12, 13, 15, 17 to 23, & 28 to 31, do not appear to have been reported upon.*

## NORTH-WEST TERRITORIES, 1890.

### 3RD SESSION—1ST LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th April, 1891.*

DEPARTMENT OF JUSTICE, OTTAWA, 24th March, 1891.

*To His Excellency the Governor General in Council :*

The undersigned having considered the Ordinances passed in the 3rd session of the legislative assembly of the North-west Territories held in the year 1890, chapters 1 to 24 inclusive, respectfully recommends that they be left to their operation and that the Lieutenant-Governor of the North-west Territories be so informed.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*



## NORTH-WEST TERRITORIES, 1891-92.

1ST SESSION—2ND LEGISLATURE.

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 4th November, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th September, 1892.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report that he has examined the Ordinances passed by the legislative assembly of the North-west Territories in the session of 1891-92. Nos. 4 to 16, 18 to 20, 22 to 26, 28 to 38, which are free from objection.

The undersigned respectfully recommends that the ordinances named be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 10th October, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th September, 1892.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to report as follows on Ordinance No. 1 of 1891-92 of the legislature of the North-west Territories (assented to on the 24th December, 1891) intitled "An Ordinance respecting the Executive Government of the Territories."

The subject of which this Ordinance treats ("The Executive Government of the Territories"), is regulated by "The North-west Territories Act" of the parliament of Canada and the Acts in amendment thereof; and, in the view of the undersigned, the parliament of Canada is paramount in authority as to all matters respecting that subject, and is indeed the only authority which can regulate and define the mode of government which is to exist in the Territories. It follows from this, that an Ordinance which goes beyond the mere regulation of detail, and which is not entirely in subordination to the Acts of parliament, or which limits or extends the powers and responsibilities of the Lieutenant Governor as established by those Acts is, so far, *ultra vires* of the legislature of the Territories.

By section 4, subsection 2, of chapter 50 of the Revised Statutes of Canada, "The North-west Territories Act," it is provided that "The Lieutenant-Governor shall administer the government, under instruction from time to time given by the Governor in Council, or by the Secretary of State of Canada."

This principle has been modified by two statutes. By chapter 19 of 1888, section 13, it is provided as follows:—

"The Lieutenant Governor shall select from among the elected members of the legislative assembly four persons to Act as an advisory council on matters of finance, who shall severally hold office during pleasure, and the Lieutenant-Governor shall preside at all sittings of such advisory council and have a right to vote as a member thereof, and shall also have a casting vote in case of a tie."

By chapter 22 of 1891, section 6, subsection 12, the legislative assembly is authorized to make ordinances relating to (among other things),

"The expenditure of territorial funds and such portion of any moneys appropriated by parliament for the Territories as the Lieutenant-Governor is authorized to expend by and with the advice of the legislative assembly or of any committee thereof."

There is reason for believing that it was intended, in passing this latter enactment, (chapter 22 of 1891), to repeal section 13 of chapter 19, of 1888, and to leave matters of expenditure to be regulated by the assembly, or by a committee thereof, under the section just quoted.

It was suggested to the Lieutenant-Governor that it would not be difficult to make the two sections above cited harmonize, and that the legislature would, of course, keep in view both provisions in framing any Ordinance under the Act of 1891, and that, if a committee of the assembly should be chosen by that body to deal with matters of expenditure, his honour might constitute that committee his advisory council under the Act of 1888, if the numbers corresponded, as they might well do.

At all events, the parliament of Canada has vested the executive government of the Territories in the Lieutenant-Governor, acting under instructions from your Excellency in Council, or from the Secretary of State, with an advisory council on matters of finance, (under section 13 of chapter 19, 1888), of a committee under chapter 22, of 1891, composed of members of the legislative assembly.

Possibly the enactment of 1891 may be regarded as authorizing the assembly to make an Ordinance to establish a committee, having powers to deal with matters of expenditure, instead of the advisory council.

In any case, the functions of the advisory council under the Act of 1888, or the committee under the Act of 1891, are limited to matters of finance and expenditure.

The Ordinance under review, however, contains the much more extensive provision that "There shall be a committee to aid and advise in the government of the Territories, so far as the same is vested in the Lieutenant-Governor and the legislative assembly." This committee, according to the Ordinance, is to consist of four persons, at least, chosen by the Lieutenant-Governor from the members of the legislative assembly.

They are to advise him on all matters connected with his duties of office, and not merely on matters of finance and expenditure.

In the opinion of the undersigned, this ordinance is *ultra vires* of the legislature of the Territories, excepting in so far as it may be considered and construed to be an Ordinance in relation to "the expenditure of territorial funds and such portion of any moneys appropriated by parliament for the Territories, as the Lieutenant-Governor is authorized to expend, by and with the advice of the legislative assembly or of any committee thereof." If given any wider effect, it would conflict with the provisions of "The North-west Territories Act," and the amendments above cited, as it would imply that the Lieutenant-Governor is to administer the government, as to all matters, according to the advice of the executive committee, according to the Ordinance.

The undersigned is informed that an intimation was conveyed to the Lieutenant-Governor, while the Ordinance was under consideration by the legislature, that this opinion was held by your Excellency's advisers, and that the Ordinance, interpreted otherwise, would be beyond the powers of the legislature, but that his Honour was pleased to give the Ordinance his assent; and the undersigned is further informed that his Honour was advised that the Ordinance could not be recognized as having any validity or effect, other than that before mentioned, and that he would be expected to conform to the statutes of Canada in all matters relating to the government of the North-west Territories, and could not be relieved from responsibility, by the circumstance of his having advisers on the general affairs of government under the Ordinance in question.

This being the case, it has not been considered necessary to advise your Excellency to disallow the Ordinance, although, in the view of the undersigned, it requires to be amended in order that confusion and misinterpretation be avoided. It will probably be sufficient that the expression of opinion contained in this report, if it should meet with your Excellency's approval, be conveyed to his honour.

The undersigned has, therefore, to recommend that a copy of this report, if approved, be transmitted to his honour the Lieutenant-Governor of the North-west Territories, together with a copy of the minute approving the same.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th October, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th September, 1892.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report as follows on Ordinances Nos. 2 and 3 of 1891-92 of the legislative assembly of the North-west Territories, respectively intituled :

(2) "An Ordinance respecting Revenue and Expenditure."

(3) "An Ordinance to amend 'The Interpretation Ordinance.'"

The undersigned has, by a report bearing even date herewith, reported fully upon No. 1, an Ordinance of the same session intituled "An Ordinance respecting the Executive Government of the Territories"; and some of the objections specified in that report to Ordinance No. 1, are applicable to these Ordinances also, dealing, as they do in part, with the same subject. For the same reasons as are therein stated, the undersigned respectfully recommends that these Ordinances be left to their operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th October, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th September, 1892.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report on the following Ordinance passed at the session of the legislative assembly of the North-west Territories in 1891-92.

(No. 17) "An Ordinance to further amend chapter 30 of The Revised Ordinances, 1889, intituled 'The Companies Ordinance.'"

"The Companies Ordinance," chapter 30, Revised Ordinances of the North-west Territories, relates to and provides for the incorporation by letters patent of companies, the purposes and objects of which are within the legislative authority of the legislative assembly.

Section 90 provides that certain sections therein specified shall apply to gas and water companies and to them only. By the present Ordinance, such sections are made to extend to companies supplying electricity for purposes of light, heat or power, or of operating a system of telephones. The Act specifying and governing the powers of the legislative assembly is now chapter 22 of 54-55 Victoria, section 6 of which gives the legislative assembly power to make Ordinances in relation to the incorporation of companies with territorial objects, but excepting (among other companies) telegraph companies.

It has been suggested, and with some force, that a telephone company is within but exception, and I, if so, the Ordinance in question, in so far as it affects telephone com-



panies, is *ultra vires* of the assembly. The question, however, is one of doubt and may properly be left for the determination of judicial tribunals.

The undersigned, therefore, recommends that the Ordinance be left to its operation. Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 31st October, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th September, 1892.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report on the following Ordinance, passed at the session of the legislative assembly of the North-west Territories in 1891-92, No. 21 "An Ordinance for protecting the public interest in Rivers, Creeks and Streams."

This is an Ordinance purporting to authorize the public to float saw-logs and other timber down all rivers, creeks and streams in the Territories, and authorising the removal by any person of obstructions therein, and the construction of dams, slides and other works necessary to secure and preserve the floatable character of such waters. The Ordinance provides for the compensation of individuals, who have made permanent improvements in connection with the waters in question, and fixes certain penalties, which are payable to the general revenue fund of the North-west Territories, for violation of its provisions.

The undersigned begs to observe, with reference to this Ordinance, that in his view it is not such a one as, under the circumstances the legislative assembly should pass. A very large proportion of the land of the North-west Territories is still vested in the Crown in the right of Canada. Those rivers in the North-west which for the most part are available for the purposes of floating timber, remain wholly the property of the Crown, notwithstanding that the land on either side may have been granted to private individuals. In so far as this Ordinance affects ungranted waters, it is dealing with the public property of Canada, and is ineffectual for the purpose which it has in view.

The undersigned is of opinion that this Ordinance if left to its operation will not effect the object for which it was intended, and will lead, wherever it is attempted to be enforced, to confusion and expense. He further thinks that it is worthy of the attention of your Excellency's government, to consider whether or not at the next session of parliament, an Act, similar in terms, dealing with the question involved, should not be submitted to the parliament of Canada. He is of opinion that the Ordinance in question should be disallowed, and he respectfully recommends accordingly.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Order in Council disallowing Ordinance above mentioned, published in the Canada Gazette on the 5th November, 1892. Vol. XXVI., No. 19, page 866.*

*Report of the Honourable the Minister of Justice, approved by his Excellency the Governor General in Council on the 29th October, 1892.*

DEPARTMENT OF JUSTICE, OTTAWA, 29th September, 1892.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report on the following Ordinance passed at the session of the legislative assembly of the North-west Territories in 1891-92.

(No. 27). "An Ordinance respecting the protection of property."

This Ordinance compels persons cutting holes in ice formed on any river, etc., to surround the same with sufficient inclosures in order to protect the public safety, and provides a penalty for its violation. Provincial legislation of this character has heretofore been left to its operation, as pertaining to legislation having reference to municipal institutions. Although the offence aimed at is governed by section 255 of the Criminal Code, 1892, and although there may be a serious question as to whether or not it is such an Ordinance, as the legislative assembly may pass, the undersigned recommends that it be left to its operation.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## NORTH WEST TERRITORIES, 1892.

### 3RD SESSION—2ND LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 7th November, 1893.*

DEPARTMENT OF JUSTICE, OTTAWA, 5th September, 1893.

*To His Excellency the Administrator of the Government in Council :*

The undersigned has the honour to submit his report upon the Ordinances passed by the legislative assembly of the North-west Territories during the session, held in the month of December, 1892, authentic copies of which were received by the Secretary of State on 23rd January, 1893, and 7th February, 1893.

The Ordinances, chapters 2 to 18, 20, 21, 23 to 34, 36 to 38 seem not to call for remark, and the undersigned recommends that they be left to their operation.

By Ordinance No. 1 intituled : "An Ordinance respecting expenditure," it is enacted that "the legislative assembly may from time to time appoint a committee of four persons from among the elected members thereof, to advise the Lieutenant-Governor in relation to the expenditure of territorial funds, and such portion of any moneys appropriated by the parliament of Canada for the territories, as the Lieutenant-Governor is authorized to expend, by and with the advice of the legislative assembly or of any committee thereof." It is also provided that such committee shall be styled "The Executive Committee of the Territories." By a statute of Canada, 50-51 Vic., chapter 19, section 13, amending "The North-west Territories Act," it is provided that :

"The Lieutenant-Governor shall select from among the elected members of the legislative assembly four persons to act as an advisory council on matters of finance, who shall severally hold office during pleasure, and the Lieutenant-Governor shall preside at all sittings of such advisory council, and have a right to vote as a member thereof, and shall also have a casting vote in case of a tie.

The undersigned is inclined to the opinion as was pointed out in his report, dated 29th September, 1892, upon an Ordinance of 1891, intituled "An Ordinance respecting the Executive Government of the Territories," (which report was approved by your Excellency in Council), that the legislative assembly is authorized by 54-55 Vic., chapter 22, section 6, to provide for the appointment of a committee, with power to advise the Lieutenant-Governor upon matters of expenditure. The last named section repeals section 13, of the North-west Territories Act, and provides that the legislative assembly shall have power to make Ordinances in relation to various classes of subjects, including "The expenditure of territorial funds and such portion of any moneys appropriated by parliament for the Territories, as the Lieutenant-Governor is authorized to expend, by and with the advice of the legislative assembly or of any committee thereof."

The undersigned, therefore, recommends that the Ordinance be left to its operation.

Ordinance No. 19 is intituled "An Ordinance to amend and consolidate as amended, "The Game Ordinance and amendments thereto." Section 11 of this Ordinance is as follows :—

"No person or corporation shall at any time, or in any manner, export or cause to be exported, or carried out of the limits of the North-west Territories, any grouse, partridge, pheasant, prairie chicken, elk, moose, cariboo, antelope or their fawn, except as provided for in section 14 of this Ordinance."

This provision may be open to question, as affecting to some extent the subject of trade and commerce which is, by the British North America Act, assigned to parliament. The undersigned, however, does not consider the objection of such importance



as to justify the exercise of the power of disallowance, and recommends that the Ordinance be left to its operation.

Ordinance No. 35 is intituled "An Ordinance to amend certain Ordinances." It enacts that the words "Lieutenant-Governor in Council" shall be substituted in such amended ordinances for the words "Lieutenant-Governor." The expression "Lieutenant-Governor in Council" is defined by the interpretation Ordinance, as amended by Ordinance number 3, of 1891-92, to mean "The Lieutenant-Governor or person administering the government of the Territories for the time being, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the executive committee of the said Territories."

The intention of this Ordinance, as will appear upon reference to the Ordinances thereby amended, is in many cases to impose upon the executive committee, the duty of advising the Lieutenant-Governor upon matters connected with the duties of his office other than expenditure.

The undersigned, in his report already adverted to, has pointed out the objections which suggest themselves to such legislation, and he considers that it can only have validity and effect as to those matters, which fall under the control of the Lieutenant-Governor, by virtue of Ordinances enacted by the legislature of the Territories.

The undersigned recommends that a copy of this report, if approved by your Excellency, be transmitted to his honour the Lieutenant-Governor of the Territories, together with a copy of the minute approving the same.

The whole of which is respectfully submitted.

JNO. S. D. THOMPSON,

*Minister of Justice.*

NOTE.—*The Ordinance No. 22 intituled "An Ordinance to amend and consolidate as amended the Ordinances respecting schools" does not appear to have been reported upon.*

## NORTH-WEST TERRITORIES, 1895.

### 4TH SESSION—2ND LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th August, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Ordinances passed by the legislative assembly of the North-west Territories in the fifty-sixth year of Her Majesty's reign (1893) (Nos. 1 to 18, 20 to 24, 26 to 31), received by the Secretary of State for Canada on the 11th day of October, 1893, and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Ordinances have been reserved for a separate report.

The undersigned also recommends that, if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Ordinances, be sent to the Lieutenant-Governor of the North-west Territories for his information.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 25th August, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report on the following Ordinance, passed by the legislative assembly of the North-west Territories in the fifty-sixth year of Her Majesty's, reign (1893) and received by the Secretary of State for Canada on the 11th day of October, 1893 :

Ordinance No. 19. "An Ordinance respecting Municipal Assessment and Collection of Taxes and Licenses."

Section 3 provides that the council of every municipality may pass by-laws for the raising of its revenue, by assessment and collection of rates, on all real estate within the municipality, income of its residents, and by a business and license tax, and by the imposition of such other licenses as are set forth in the Ordinance, subject, however, to certain exemptions. These exemptions are stated in the Ordinance, and include property declared by parliament to be exempt from taxation.

The Ordinance proceeds to provide a scheme of taxation and the adoption of the Ordinance in any municipality is declared to be optional.

Section 51 is as follows : "So much of the charter of any corporation or company, organized under the laws of the Dominion of Canada, as exempts such corporation or company from taxation as it conflicts with this Ordinance is hereby repealed."

It will be observed that this section is inconsistent with the preceding provision, which establishes as one of the exemptions from taxation, "all property specially exempted by the parliament of Canada."

By 54-55 Victoria, chapter 22, "An Act to amend the Acts respecting the North-west Territories" it is enacted that the legislative assembly shall, subject to the provisions of this Act, or of any other Act of the parliament of Canada, at any time in force in the Territories, have power to make Ordinances for the government of the Territories in relation to the subjects therein enumerated.

While the legislature of the Territories has power to make Ordinances in relation to the subjects specified in the section last referred to, its power is limited to such enactments as may not be inconsistent with the statutes of Canada, and obviously it has no power to repeal or alter those statutes.

The Ordinance under consideration is, therefore, *ultra vires* of the legislature of the Territories, in so far as it is inconsistent with, or purports to repeal, or alter, any statute of parliament.

The undersigned also refers to section 38, which provides as follows:—

"38. Every incorporated bank having a branch or agency within the municipality, shall be required to make a return showing the total amount of bills, notes and drafts under discount, on the 1st of January preceding date of return, and the license tax upon the same shall not exceed for the first fifty thousand dollars, two hundred dollars, and for each addition fifty thousand dollars, a further sum of one hundred dollars.

"Provided that for private or unincorporated banks, the license tax shall be but one-half that charged to chartered banks."

Irrespective of the objection to which this section would be open, by reason of its discriminating in the matter of taxation against chartered banks, it appears to the undersigned that the section is *ultra vires*, because the Bank Act does not intend that private or unincorporated banks shall be permitted to do business.

The undersigned is informed that no assurance can be held out that this Ordinance will be amended, so as to remove the objections to which the undersigned has called attention, within the time limited for disallowance; and the undersigned, being of opinion that the legislative assembly of the North-west Territories in passing the Ordinance under consideration, exceeded its powers, therefore recommends that the Ordinance be disallowed.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Order in Council disallowing the Ordinance above mentioned, published in the "Canada Gazette," on the 25th day of August 1894. Vol. XXVIII, No. 9, page 333.*

*Report of the Hon. the Minister of Justice approved, by His Excellency the Governor General in Council on the 25th August, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1894.

*To His Excellency the Governor General in Council:*

The undersigned has the honour to submit his report on the following Ordinance, passed by the legislative assembly of the North-west Territories in the fifty-sixth year of Her Majesty's reign (1893) and received by the Secretary of State for Canada on the 11th day of October, 1893:

Ordinance No. 32. "An Ordinance to empower the Municipality of the town of Edmonton to construct and operate a Tramway."

This Ordinance purports to authorize the municipality of the town of Edmonton to construct and operate a tramway within the town, and for a distance outside of the town, not exceeding five miles. It provides that the tramway and its appurtenances with the revenue derived therefrom shall be held as a separate asset of the town, not liable for any debt of the town except, for money borrowed upon the security of the tramway, where the tramway is specially charged with such debt, under the provisions of the Ordinance.



Section 20 appears to provide that the town council may, when so authorized by by-law, enter into a contract with the company, empowered by parliament to construct a tramway in the vicinity of Edmonton, such as is provided for in the Ordinance, and subject to its provisions for the construction and operation of the tramway authorized to be constructed by the Ordinance.

Section 22 provides that the town shall not grant any such privilege to the company for a period longer than twenty years, and that the town may, after entering into such an agreement with the company, by notice resume the ownership of the tramway upon payment of the amount to the company, to be fixed by arbitration.

The undersigned is of opinion that the power of the legislative assembly of the Territories to enact this Ordinance may be questionable.

Under the Act amending the North-west Territories Act, 54-55 Victoria, chap. 22, section 6, the legislative powers of the Assembly with regard to the incorporation of companies, are declared not to extend to "railway, steamboat, canal, transportation, telegraph and irrigation companies." The powers conferred upon the municipal corporation by the Ordinance in question appear to be such as may appertain to a railway or transportation company, and, therefore, although the Ordinance does not incorporate any company, it does confer powers which Parliament may not have contemplated that the Assembly should grant.

The undersigned observes, however, that by section 26 it is provided that the Ordinance shall only come into force after the passing of an Act of parliament confirming its provisions, and subject to any variations or restrictions that may be prescribed by such Act.

It appears to the undersigned, therefore, that the Ordinance may, if amended, be conveniently left to its operation, and he so recommends.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 25th August, 1894.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th May, 1894.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit this report on the following Ordinances passed by the legislative assembly of the North-west Territories in the fifty-sixth year of Her Majesty's reign (1893), and received by the Secretary of State for Canada on the 11th day of October, 1893, as follows :—

Ordinance No. 25. "An Ordinance to abolish priority among execution Creditors."

It is provided by this Ordinance that, subject to the several provisions therein contained, there shall be no priority among creditors by execution from the Supreme Court of the North-west Territories.

The attention of the undersigned has been called to this ordinance, as being in conflict with section 39 of "The Territories Real Property Act," which provides in effect, that the registrar shall keep a day book in which shall be entered by a short description, every instrument which is given in for registration, with the time of filing, and for the purpose of priority between mortgagees, transferees and others, the time of filing shall be taken as the time of registration. Further, section 94 of the Act (as substituted by 51 Vict., chapter 20, section 16) provides that certified copies of writs of execution, accompanied by a memorandum of the lands intended to be affected, are to be delivered to the registrar by the sheriff, and the effect of such delivery is, by this section, stated in the following terms: "from and after the delivery thereof to the Registrar, the same shall operate as a *carcat* against the transfer by the owner of the land mentioned in such memorandum, or of any interest he has therein, and no transfer shall be made by him of such land or interest therein, except subject to such writ or other process."

This provision may be intended to describe the whole operation of the delivery of the writ by the sheriff to the registrar, and it may be consistent with the provisions of the Act that there should not be priority between writs of execution according to the date of their delivery to the registrar. The Ordinance in question would, in any case, have effect so far as concerns property to which the Territories Real Property Act does not apply, and the question as to its operation with regard to lands, may be left to the court for determination.

Ordinance No. 33. "An Ordinance to incorporate the city of Calgary."

The undersigned desires to call attention to section 117, empowering the council of the city of Calgary to make by-laws for certain purposes therein mentioned. Also to section 149, which provides, that any person who shall violate any of the provisions of any such by-law, passed by the city of Calgary, or which may hereafter be passed under the authority of this ordinance, which by-law shall not contain any provision for punishment for breach thereof, shall be liable, on summary conviction, to a penalty not exceeding one hundred dollars, or imprisonment for any term not exceeding six months, or to both fine and imprisonment.

Among other subjects upon which the council is empowered to make by-laws are the following :—

"(2.) The prevention of cruelty to animals, not being inconsistent with any statute or ordinance in that behalf."

"(10.) For preventing the posting of indecent placards, writings or pictures, or the writing of indecent words or of making indecent pictures or drawings on walls or fences within the limits of the city."

"(11.) For preventing vice, drunkenness, profane swearing, obscene, blasphemous or insulting language, fighting, disorderly conduct, and any other immorality and indecency, on or near any street, or in or near any public place or building within the limits of the city."

"(12.) For suppressing gambling-houses, disorderly-houses and houses of ill fame."

"(14.) For restraining and punishing vagrants and mendicants within the limits of the city, and for preventing common begging or persons in the streets from importuning others for help or aid in money, or deformed, or malformed, or diseased persons, from exposing themselves, or being exposed in the public streets to excite sympathy, or induce help or assistance from general or public charity."

It appears to the undersigned that these provisions, or some of them, may relate to the subject of criminal law, and that the legislature of the Territories could not, therefore, confer all the powers which the clauses referred to appear to confer.

By-laws may, however, be framed under these clauses which would not be open to question, and as to such by-laws as might be questionable, the courts would afford a remedy for persons affected thereby.

The undersigned, therefore, recommends that the Ordinances mentioned in this report be left to their operation, and that a copy of this report, if approved, be sent to the Lieutenant-Governor of the Territories for his information.

Respectfully submitted,

JNO. S. D. THOMPSON,  
*Minister of Justice.*

## NORTH-WEST TERRITORIES, 1894.

### 5TH SESSION—2ND LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd February, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 9th February, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Ordinances passed by the legislative assembly of the North-west Territories, which were assented to on the 7th day of September, 1894, and received by the Secretary of State for Canada on the 9th day of October, A.D. 1894, (Nos. 1, 2, 4, 7 to 19, 21 to 42,) and he is of opinion that they are unobjectionable and may be left to their operation.

The remaining Ordinances Nos. 3, 5, 6 and 20 have been reserved for separate report.

The undersigned recommends that a copy of this report, if approved, with a copy of the schedule, be sent to the Lieutenant-Governor of the North-west Territories for his information.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd February, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 9th February, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to submit his report upon the following Ordinances of the legislative assembly of the North-west Territories, assented to on the 7th day of September, 1894, and received by the Secretary of State for Canada on the 9th day of October, 1894.

Ordinance No. 3. "An Ordinance to amend and consolidate as amended 'The Municipal Ordinance' and the several Ordinances amending the same."

It is enacted by part 3, section 16, that the council of every municipality may pass by-laws for the purposes therein mentioned.

It appears to the undersigned that, as to some of these purposes, the legislative assembly has exceeded the power conferred upon it by the North-west Territories Act. For instance, such provisions as the following are in certain respects objectionable ;—

Paragraph 14 "The establishment and regulation of public markets and imposition of penalties for light weights, short measurement and any breach of contract in public markets and restraining or preventing selling on the streets." The subject of weights and measures is, under the British North America Act, assigned to parliament, and there are statutes providing for the adoption of proper weights and measures and penalties for use of unjust or false ones.

Paragraph 36, "For the controlling, regulating and licensing, livery stables and "sale stables, telegraph and telephone companies, telegraph and telephone offices, insurance companies, offices and agents, real estate dealers and agents, intelligence offices



"and employment offices or agents, butcher shops or stalls, skating, roller, or curling rinks, and all other business, industries or callings, carried on, or to be carried on within the municipality, or commercial travellers or other persons selling goods, merchandise or other effects of any kind whatsoever, or offering the same for sale by sample cards, specimens or otherwise, for or on account of any merchant, manufacturer or other person, selling directly to the consumer, not having his principal place of business in the municipality and collecting license for the same." The powers thus conferred, in some particulars, exceed the authority which has been delegated to the legislative assembly, and by-laws might be framed under this provision, which would conflict with Dominion legislation.

It is provided by part 3 section 22, that the council of a city, town or municipality may make by-laws for the purpose, among others, of permitting the track of any railroad to be laid upon or along any street in the municipality, and of providing compensation for any damage that may be done thereby to the property on such streets; also for the purpose of regulating the use of locomotive engines and the speed of trains upon any railroad within the municipality, and of preventing the obstructing of any streets by engines or trains. The municipality is also empowered to regulate, by by-law, the blowing of whistles or ringing of bells, while the engine is going along the streets, and to impose a penalty for breach of any such by-law, not exceeding \$500. Provision is also made for the service of documents, in proceedings taken for the violation of the by-laws.

If such powers are intended to apply to railways, which are subject to the provisions of the Railway Act they are, to that extent, *ultra vires*. The undersigned considers, however, that these provisions and others which may be open to question under which the municipalities are given power to make by laws would, in a greater or less degree, have application to matters which are within the competency of the legislative assembly, and if in any case the municipality should exceed its authority, the courts would afford a remedy to any person prejudiced.

The attention of the undersigned has also been directed to part 4, of the same ordinance, which is as follows:—"Crown Lands occupied, whether under right of purchase or homestead or pre-emption entry, and patented lands vested in or held by Her Majesty which may be hereafter, or may have been heretofore sold, or agreed to be sold, to any person or corporation, or which may be located as a free grant, homestead or pre-emption, shall be liable to taxation, from the date of such homestead, or pre-emption entry, location sale or grant; and all such lands shall be liable to taxation, thenceforward under this ordinance, in the same way as other land, whether any license of occupation, certificate of sale, or receipt for money paid on such sale, has or has not been, or is, or is not issued, and in case of sale or agreement for sale by the Crown, whether any payment has, or has not been, or is, or is not made thereon, and whether any part of the purchase money is or is not overdue; but such taxation shall not in any way affect the right of Her Majesty in such lands."

The undersigned observes that while in form this section would appear to conflict with section 125 of the British North America Act, which provides that "no lands or property belonging to Canada or any province, shall be liable to taxation," still in substance, as construed by the undersigned, it merely enacts that such interest in Crown lands, as Her Majesty may have parted with shall, be liable to taxation, and in that view the undersigned would not consider the section objectionable. It will be observed that the provision in question has been copied in terms from the Assessment Act of Manitoba, Revised Statutes, chapter 101, section 5, which section was left to its operation without comment.

Ordinance No. 5. "An Ordinance to amend the Judicature Ordinance."

It has been represented to the undersigned that the fees allowed by this Ordinance to sheriffs, deputy sheriffs and bailiffs, for services under the small debt procedure, are entirely inadequate for the services which these officers are by law required to perform, that by reason of the inadequacy of the fees, it has become difficult to have writs executed in the small debt cases, and that delay and great inconvenience to suitors has resulted.

The undersigned considers that this is a matter which should be inquired into by the executive committee of the Territories and rectified by amendment, should the grievance alleged be found to exist. The objection does not, however, appear to the undersigned to be of such a character as to call for the exercise of the power of disallowance.

Ordinance No. 20. "An Ordinance to prevent Trespass in pursuit of game."

This Ordinance prohibits the taking or killing of game upon any inclosed or cultivated lands, and provides that any person contravening the provisions of the Ordinance shall be liable to a penalty of \$25.

The undersigned has received a communication, stating in effect that this Ordinance is not adapted to the circumstances of the country, and not in accordance with the sentiment of the inhabitants. It is also pointed out that the legislation is exceptional in its character, so far as the Game Laws of Canada, or any of the provinces of Canada are concerned.

These and other considerations which have been urged are such as, in the opinion of the undersigned, might properly be presented to the territorial legislature, with a view to the repeal of the Ordinance, but the matter is one entirely within the province of the Legislative Assembly, and not such as would justify the exercise of the power of disallowance.

The undersigned, therefore, recommends that the Ordinances herein mentioned, be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the North-west Territories for his information.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th February, 1895.*

DEPARTMENT OF JUSTICE, OTTAWA, 2nd February, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that by the North-west Irrigation Act, chapter 6, which is limited in its application to the North-west Territories, it is in substance enacted that where inconsistent rights have not been already acquired, the right to the use of all water shall be deemed to be vested in Her Majesty; that companies desiring to use such water for irrigation purposes, shall make application therefor in the manner provided by the Act, and that any companies desiring to construct works for the purpose of retaining and carrying such water shall, under the statutory proceedings, obtain for that purpose the authority of your Excellency in Council. The Act also provides for the disposal of the water by companies obtaining such authorization, and requires such companies to make annual returns as to their business to the Minister of the Interior. Such companies are authorized to issue bonds to a limited amount, and your Excellency in Council is given power to make regulations affecting the works and business of the companies so authorized, and for carrying out the provisions of the Act according to their true intent. By an Ordinance of the legislative assembly of the North-west Territories (No. 6 of 1894) intituled: "An Ordinance respecting the formation of Irrigation Districts" which was assented to on the 7th day of September last, and received by the Secretary of State for Canada on the 9th day of October last, it is in effect enacted, that any number of the owners and homesteaders of land situated within any tract of land, any portion of which is capable of being served by the works which may be authorized to be constructed under the provisions of the North-west Irrigation Act, may petition the Lieutenant-Governor in Council to erect such tracts into an irrigation district, and that, after certain proceedings mentioned in the Ordinance, a meeting of the voters of such area shall be held to decide by vote as to the

erection of the district, when, if the majority of votes are in favour of erecting the district, trustees therefor are to be selected, and a proclamation is afterwards to be made by the Lieutenant-Governor in Council establishing the district.

Section 20 is as follows:—

“Every district hereby created shall be a body corporate, and shall have all the rights, and be subject to all the liabilities of a corporation; and especially shall have full power to acquire, hold and alienate both real and personal estate for all purposes of the district, and by the same name they and their successors shall have perpetual succession, and they shall have power to sue and be sued, and implead and be impleaded, answer and be answered unto, in all courts and in all actions, causes and suits-at-law and in equity whatsoever, and that they shall have a common seal, with power to alter and modify the same at their will and pleasure, and they shall be in law capable of receiving by donation, acquiring, holding, disposing of, and conveying any property, real or movable, for the use of the said district, and of becoming parties to any agreements in the management of the affairs of the said district, and shall have all the powers necessary for the construction, working and maintenance of works, irrigation works, for the uses and purposes of the said district and the inhabitants thereof”.

The word “works” is defined by the Ordinance to have the same meaning as that given to it by the North-west Irrigation Act.

It is further enacted that the board of trustees shall obtain the authorization of his Excellency the Governor General in Council for the construction of the necessary works, in the manner provided by the North-west Irrigation Act. That such authority having been obtained, the corporation shall have power, subject to the conditions and in the manner prescribed by the Ordinance, to issue debentures charged upon the real estate comprised within the district for the purpose of defraying the cost of the establishment of the district and the construction of the works, also to assess the land within the district, for the purpose of maintaining the works and redeeming the debentures.

Apart from any question as to the power of the assembly to create a body corporate for the purpose of irrigation, parliament has declared, by section 42 of the North-west Irrigation Act what the powers of companies authorized under that Act, as to the issuing of debentures, shall be; while under the provisions of the Ordinance, corporations are given borrowing powers, which are not within the contemplation of the Act of parliament.

By 54 and 55 Victoria, chapter 32 section 6, as amended by 57-58 Victoria, chapter 17, section 1, the legislative assembly of the territories has power to make Ordinances in relation to “the incorporation of companies with territorial objects, with the following exceptions.

- (a.) “Such companies as cannot be incorporated by a provincial legislature.
- (b.) “Railway companies (not including tramway and street railway companies) and steamboat, canal, transportation, telegraph and irrigation companies.
- (c.) “Insurance companies.”

The authority to incorporate irrigation companies has, therefore, not been delegated by parliament to the legislative assembly.

The expression “company” is defined by the North-west Irrigation Act to include any incorporated company, the objects and powers of which extend to or include the construction or operation of irrigation works under that Act, or the carrying on thereunder of the business of the supply, or the sale, of water for irrigation purposes, and the undersigned considers that the expression “irrigation companies,” as used in the amendment of the North-west Territories Act, above quoted, should not receive a more limited interpretation than that which the word “company” bears under the North-west Irrigation Act. It would seem therefore, that the Ordinance in question is *ultra vires* of the legislative assembly of the territories, in so far as it provides for the constitution of companies, to which the provisions of the North-west Irrigation Act are to apply.

The question may be raised as to how far the expression “irrigation companies” as used in the Act of constitution, includes corporations of the character which the assembly has attempted to constitute, but he has not been able to come to any other conclusion than that, in excluding irrigation companies, from corporations which might



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be constituted by the legislative assembly, parliament has evinced an intention not to delegate to the assembly the authority to create corporations having for their object irrigation.

The power to issue debentures and other powers conferred by the Ordinance in question are of such an important nature and so far reaching in their effects as to render it undesirable that any doubt should exist as to the validity of the Ordinance, or that the provisions of the Ordinance should be invoked, when there is a prospect that, if left to the courts, the Ordinance would be declared invalid, and it therefore appears to him that the Ordinance should be disallowed.

The undersigned, however, desires to call attention to the report of the late Right Honourable Sir John A. Macdonald, the Minister of Justice, which was approved by your Excellency in Council on the 9th June, 1868, in which it is stated "that, where a measure is considered only partially defective, or where objectionable, as being prejudicial to the general interests of the Dominion, or as clashing with its legislation, communication should be had with the provincial government in respect to such measure, and that, in such case, the Act should not be disallowed, if the general interests permit such a course, until the local government has an opportunity of considering and discussing the objections taken, and the local legislature has also an opportunity of remedying the defects found to exist."

Following the practice thus recommended, and which has since been followed in similar cases, he recommends that a copy of this report, be transmitted to the Lieutenant-Governor of the North-west Territories, with a request that he should inform your Excellency's government whether this Ordinance will be repealed, or so amended as to remove the objections to which attention has been called, within the time limited for disallowance, and with the intimation that in the meantime he should not exercise the authority which the Ordinance professes to confer upon him.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

## NORTH-WEST TERRITORIES, 1895.

1ST SESSION—3RD LEGISLATURE.

*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 3rd January, 1896.*

DEPARTMENT OF JUSTICE, OTTAWA, 18th December, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has examined the Ordinances passed by the legislative assembly of the North-west Territories in the fifty-eighth year of Her Majesty's reign (1895)—Nos. 1 to 28, 30 to 36,—received by the Secretary of State for Canada on the 22nd and 29th October last; and he is of opinion that they are unobjectionable and may be left to their operation.

The undersigned also recommends that, if this report be approved, a copy of the same, with a copy of the schedule of the titles of the Ordinances, be sent to his Honour the Lieutenant-Governor for his information.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 3rd January, 1896.*

DEPARTMENT OF JUSTICE, OTTAWA, 20th December, 1895.

*To His Excellency the Governor General in Council :*

The undersigned has had under consideration a bill passed by the legislative assembly of the North-west Territories at its last session, 1895, received by the Secretary of State for Canada on the twenty-ninth day of October, 1895, No. 29, intituled:—

“An Ordinance to amend and consolidate as amended the Ordinances respecting Schools” which bill was reserved by his Honour the Lieutenant-Governor for the assent of your Excellency.

The Lieutenant-Governor's report merely states that the passing of the bill by the assembly took place on the last day of the session, almost immediately before the prorogation of the legislature, and as he consequently had no opportunity of examining its provisions, he reserved his assent thereto.

The bill, as its title indicates, is intended to consolidate and amend the various ordinances respecting the schools of the territories. It relates entirely to the subject of education, and it was intended to go into effect on the first day of January, 1896.

By section 14 of the North-west Territories Act it is provided in effect as follows :

The Lieutenant-Governor by and with the advice and consent of the legislative assembly of the North-west Territories “shall pass all necessary Ordinances in respect to education; but it shall therein always be provided, that a majority of the ratepayers of any district or portion of the Territories, or of any less portion or subdivision thereof by whatever name the same is known, may establish such schools therein as they think fit and make the necessary assessment and collection of rates therefor; and also that the minority of the ratepayers therein, whether Protestant or Roman Catholic, may establish separate schools therein, and in such case, the ratepayers establishing such Protestant or

Roman Catholic separate schools shall be liable only to assessments of such rates as they impose upon themselves in respect thereof.

2. The power to pass Ordinances, conferred upon the Lieutenant-Governor by this section, is hereby declared to have been vested in him on the seventh day of May, one thousand eight hundred and eighty.

The bill reserved appears to contain the provisions with regard to the establishment of schools by the majority of the ratepayers, the establishment of separate schools and the liability to assessment therefor, which are required by the section quoted, as a condition to the validity of the legislation. It will be observed that the Lieutenant-Governor has stated no question for consideration with regard to the constitutionality of the measure, and no representations have been made to your Excellency from any other quarter that the assembly has by the enactment exceeded its authority.

Under the instructions which were issued to the Lieutenant-Governor he is required to take care that all laws assented to by him or reserved for the signification of your Excellency's pleasure thereon shall, when transmitted by him, be fairly abstracted in the margin and be accompanied in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such laws, otherwise the Lieutenant-Governor had no instructions in any way affecting this bill. It would seem, therefore, to have been intended that a measure of this character should depend for its effect upon the exercise of that authority which by the North-west Territories Act has been committed to the Lieutenant-Governor and the assembly of Territories, and that the case is not one in which your Excellency should be called upon to give effect to the legislation.

The undersigned is of opinion that the Lieutenant-Governor ought not to have reserved that bill for your Excellency's assent.

For the reasons stated the undersigned recommends that the Lieutenant-Governor be informed that your Excellency does not propose to signify your pleasure with respect to the reserved bill, or to take any action upon it. It will be for the legislative assembly of the Territories, at its next session, if it so desires, to re-consider the bill, and re-enact or reject it in its discretion. If the bill be re-enacted and assented to by the Lieutenant-Governor, the authority is vested in your Excellency to disallow the ordinance at any time within a year from its receipt by the Secretary of State, and the question as to whether the power of disallowance should be exercised, could then be properly considered.

The undersigned further recommends that a copy of this report, if approved, be transmitted to his honour the Lieutenant-Governor for his information.

Respectfully submitted.

CHARLES HIBBERT TUPPER,  
*Minister of Justice.*

*His Honour the Lieutenant-Governor to the Honourable the Secretary of State.*

OTTAWA, ONT., 31st January, 1896.

SIR :

I have the honour to acknowledge the receipt of a copy of the report made by the Honourable the Minister of Justice, dated December 20th, 1895, and approved by the Governor in Council, upon an enactment passed by the legislature of the North-west Territories at its last session in September, 1895, and intituled "An Ordinance to amend and consolidate, as amended, the Ordinance respecting Schools."

As the above mentioned report involves issues directly constitutional, I venture to give my reasons for the action taken by me, and the authorities which, in my estimation, justified such procedure.

Section four (54-55 Vic., chap. 22) "An Act to amend the Acts respecting the North-west Territories," provides :—"There shall be a session of the legislative assembly convened by the Lieutenant-Governor at least once in every year, so that twelve



months shall not intervene between the last sitting of the assembly in one session and its first sitting in another session : and such assembly shall sit separately from the Lieutenant-Governor and shall present bills passed by it to the Lieutenant-Governor for his assent, who may *approve* or *reserve* the same for the assent of the Governor General."

The list of bills submitted for assent included "The Ordinance to amend and consolidate, as amended, the Ordinance respecting Schools," the provision of which had in no form been submitted to me, as mentioned in my communication to the Honourable the Secretary of State under date October the 24th, 1895, as follows :—

"The passing of this bill by the assembly took place on the last day of the session, "and almost immediately before the prorogation of the legislature, consequently, as I "had no opportunity to examine its provisions, I reserved my assent thereto."

Being informed by the clerk of the assembly that the measure was incomplete and not ready for inspection (a large number of amendments having been passed immediately prior to prorogation) my natural inclination was to withhold assent : but this would have been to assume a serious responsibility, in view of the fact that the North-west Territories Act limited my jurisdiction to "approval" or "reservation." Thus, I had either to assent to an Ordinance, the purport of which, save and except the title, I was in utter ignorance of, or adopt the only remaining alternative under the statute, namely, to "reserve assent." To have rejected the Ordinance would, it seemed to me, have been a rather delicate proceeding from a constitutional standpoint, in view of the provisions of the Territorial Act, and prorogation of the assembly, being then in active progress, I was far from convinced that I would be justified in staying proceedings, in order that the bill might be arranged in such form as permitted a consideration of its provisions. Under these circumstances I deemed it wiser to reserve assent, quite aware that the Ordinance was a nullity, unless the federal machinery could be invoked to provide a process of legalization. I realized further that the matter would be submitted to the Minister of Justice for it certainly appeared to be an anomaly to state that the bill was not ready for assent, and yet be obliged to "reserve assent."

I would further respectfully call attention to the difference between the authority vested in a Lieutenant-Governor of the North-west Territories, and a Lieutenant-Governor of provinces having a responsible executive. Todd in his work *Parliamentary Government in the British Colonies* thus defines these powers. "It equally devolves upon these high officers of the state (Lieutenant-Governors) in the Queen's name to open and to close these assemblies, and, in conformity with their instructions, or with the usage of parliament, and pursuant to their constitutional discretion, to *give* or to *withhold* the *assent of the Crown* to the bills enacted therein, or to reserve the same for the consideration of their superior officer, his Excellency the Governor General. And further (page 586) The British North America Act, 1867, section fifty-five as applied to the provincial constitutions, by section ninety, expressly empowers a Lieutenant-Governor, in his discretion, to withhold the royal assent from any bill presented to him.

The same authority points out that, in Nova Scotia, Lieutenant-Governor Archibald from 1874 to 1883, withheld his assent to bills. In New Brunswick the same course was taken by Lieutenant-Governor Wilmot in 1870-71 and 1872 ; by Lieutenant-Governor Tilley in 1875-77 ; and by Lieutenant-Governor Wilmot in 1882. In Ontario the Crown has never refused to withhold the assent to any bill passed by the provincial legislature. Hence, while the Lieutenant-Governors of the other provinces have this power, a special enactment deprives, and limits the representative of the Crown in the Territories.

I, therefore, venture respectfully to suggest that the attention of his Excellency's advisers may not have been directly called to the closing paragraph of my letter of the 27th October, 1895, or to the manifest difference between the powers with which the provincial Lieutenant-Governors are vested and the restricted jurisdiction of a Lieutenant-Governor of the Territories when called upon to deal with legislation presented for assent.

I remain, &c.,

C. H. MACKINTOSH,

*Lieutenant-Governor of the North-west Territories.*

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*Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council, on the 11th day of March, 1896.*

DEPARTMENT OF JUSTICE, OTTAWA, 10th February, 1896.

*To His Excellency the Governor General in Council :*

The undersigned has the honour to report that he has considered a despatch from his Honour the Lieutenant-Governor of the North-west Territories to the Honourable the Secretary of State, dated 31st January last, copy of which has been referred to the undersigned by your Excellency in Council.

The despatch relates to a copy of the approved report of the predecessor of the undersigned, by which your Excellency declined to give effect to a bill, passed by the legislature of the North-west Territories, intituled "An Ordinance to amend and consolidate as amended the Ordinance respecting schools", which bill was reserved by the Lieutenant-Governor for your Excellency's assent.

His Honour the Lieutenant-Governor states in effect, that the constitution of the North-west Territories differs from the constitution of the several provinces, in that no power is conferred upon the Lieutenant-Governor of the Territories to withhold assent to any measure, which, having passed the legislative assembly, is presented to him : that he is required by the statute either to approve or reserve the measure for your Excellency's assent ; that the bill was not presented to him by the assembly in such form as to enable him to consider its provisions, nor until the proceedings for the prorogation of the assembly had so far advanced, as to render delay inexpedient ; that his inclination would have been to withhold assent had authority to do so been vested in him, but that having no such authority he pursued the only course which he regarded as open, in reserving the bill.

The undersigned agrees with his Honour the Lieutenant-Governor in the view that he could not constitutionally withhold assent ; also that the constitution does not contemplate that a Lieutenant-Governor should be called upon to exercise the discretion which is invested in him, with regard to any bill which may be presented, without having had a reasonable opportunity of informing himself as to the nature of its provisions. As to the question whether, in view of the circumstances, it would have been justifiable to postpone prorogation of the assembly, the undersigned observes that the Lieutenant-Governor had authority to postpone the prorogation and, if the balance of convenience stood against the exercise of such authority, that circumstance ought not to cast upon your Excellency a responsibility, which should otherwise be borne by the Territorial authorities ; nor do any of the other observations of the Lieutenant-Governor appear to affect, the view already stated, that a bill of the character in question should not receive effect under authority vested in your Excellency. In future, arrangement will doubtless be made by the legislative assembly to inform his Honour as to the provisions of the several bills, which are to be presented for assent, and the undersigned does not consider it necessary at present to advise any amendment to the North-west Territories Act.

The undersigned recommends that a copy of this report if approved, be transmitted to his Honour the Lieutenant-Governor for his information.

Respectfully submitted.

A. R. DICKEY,  
*Minister of Justice.*





## APPENDIX A.

## RE COPYRIGHT ACT.

*Lord Knutsford to His Excellency the Governor General.*

DOWNING STREET, 30th June, 1892.

MY LORD,

I have to express my regret that it has not been possible for me to reply at an earlier date to your despatch of the 19th of October, 1891, in which you transmitted the address to Her Majesty, from the Senate and Commons of Canada in parliament assembled, praying in effect for imperial legislation which should explicitly confer upon the parliament of Canada, the power to legislate on all matters relating to copyright, without regard to the statutes in force when the parliament of Canada was established, and further, that notice might be given of the withdrawal of Canada from the Berne Copyright Convention.

2. I duly laid this petition before Her Majesty, who was pleased to receive it very graciously, and to command that it should be taken into consideration by those of her ministers whose departments were more immediately concerned in the subject.

3. I communicated copies of the petition to the Secretary of State for Foreign Affairs and to the president of the Board of Trade, and after some discussion it was agreed to appoint a committee of leading officials of the three departments, who should, with the assistance of one of the parliamentary counsel, consider the whole subject of Canadian copyright and report thereupon to Her Majesty's government. The report of this committee was unfortunately delayed by the illness of one of the members, but by the end of May it was in the hands of myself and my colleagues.

4. This paper will satisfy your lordship and the parliament of Canada that, though Her Majesty's government have not as yet tendered advice to Her Majesty in respect of this petition, they have not failed to submit the question to a complete and exhaustive examination. It appears to them desirable, before any action is taken upon this report, that an opportunity should be given to the Dominion of Canada of once more considering the whole subject in the light thrown upon it by the researches of the committee.

5. I therefore have the honour to transmit to you a copy of the committee's report, and to request you to communicate it to your ministers and invite them to favour me with their views upon it.

6. I have also to request that you will lay this despatch and its inclosures before the parliament of Canada.

I have, &c.

KNUTSFORD.

## CANADIAN COPYRIGHT.

*Report of the Departmental Representatives (of the Colonial Office, Foreign Office, Board of Trade, and Parliamentary Counsel's Office) appointed to consider the Canadian Copyright Act of 1889.*

*To the Right Hon. Sir Michael Hicks Beach, Bart., M.P., &c., &c.*

SIR,—The departmental representatives appointed to consider the Canadian Copyright Act of 1890, have agreed to the following report:—

1. The question which the representatives have to consider is, what action should be taken with respect to the recent Canadian Copyright Act. For the sake of simplicity, the question is here considered with reference only to books.

2. The Copyright Act of 1842, gives copyright in a book first published in the United Kingdom, for a term of 42 years from first publication, or seven years from the author's death, whichever is longer. The copyright extends to the whole of the Queen's dominions. It is not necessary that the book should be printed in the United Kingdom, and in the opinion of the law officers of the Crown it is not necessary that the author should be a British subject or domiciled or resident in the Queen's dominions. First publication in the United Kingdom is consistent with concurrent publication elsewhere.

3. The Act of 1842 was satisfactory from the point of view of the British author and publisher, because it secured copyright throughout the Queen's dominions. But it was disadvantageous from the point of view of the colonial author and publisher, because it gave no protection to works first published in his own colony. Within his own colony, he might obtain protection by a Colonial Copyright Act, but that Act could not operate elsewhere. It was also disadvantageous from the view of the colonial reader, because it tended to raise the price of copyright books. In the United Kingdom this advantage is lessened by the facilities for reading afforded by clubs, book societies, and circulating libraries. But in a sparsely populated country, such facilities do not exist, and those who want to read have to buy.

4. Complaints of the operation of the Act of 1842 were urged, soon after it was passed, and from the North America provinces urgent representations were made in favour of admitting into those provinces cheap United States reprints of English works. In 1846, the Colonial Office and the Board of Trade admitted the justice and force of the considerations which had been pressed upon the home government "as tending to show the injurious effects produced upon our more distant colonies by the operation of the Imperial law of copyright."

5. On November 5, 1846, Earl Grey, then Secretary of State for the Colonies sent the following circular despatch to all the governors of the North American Colonies:—

DOWNING STREET, Nov. 5, 1846.

"SIR,—Her Majesty's government, having had under their consideration the representations which have been received from the governors of some of the British North American provinces, complaining of the effect in those colonies of the Imperial copyright law, have decided on proposing measures to parliament in the ensuing session, which, if sanctioned by the legislature, will, they hope, tend to remove the dissatisfaction which has been expressed on this subject, and place the literature of this country within the reach of the colonies on easier terms than it is at present. With this view, relying upon the disposition of the colonies to protect the authors of this country, from the fraudulent appropriation of the fruits of labours upon which they are often entirely dependent, Her Majesty's government propose to leave to the local legislatures the duty and responsibility of passing such enactment as they may deem proper, for securing both the rights of authors and the interests of the public. Her Majesty's government will accordingly submit to parliament a bill authorizing the Queen in Council to confirm, and finally enact any colonial law or ordinance respecting copyright, notwithstanding any repugnancy of any such law or ordinance to the copyright law of this country, it being provided by the proposed Act of parliament that no such law or ordinance shall be of any force or effect, until so confirmed, and finally enacted by the Queen in Council; but that, from the confirmation and final enactment thereof, the copyright law of this country shall cease to be of any force or effect within the colony in which any such colonial law or ordinance has been made, in so far as it may be repugnant to, or inconsistent with, the operation of any such colonial law or ordinance.

"I have, &c.,

"GREY."

6. It was, however, eventually determined not to legislate in accordance with the terms of Lord Grey's despatch, but instead to pass the Imperial Act, which bears the short title of the Colonial Copyright Act, 1847, but is commonly known as the Foreign

Reprints Act. This Act provided that if Her Majesty was satisfied that a Colonial Act made sufficient provision for securing to British authors reasonable protection within the colony, she might by Order in Council declare that, so long as the provisions of the Colonial Act were in force, the prohibitions contained in the Copyright Act of 1842, and in the Customs Acts, or in any other Imperial Act, against importing, selling, or otherwise dealing in books copyrighted in the United Kingdom, should be suspended as to that colony.

7. The Act of 1874, though general in its terms, was intended specially for the benefit of Canada. At that time British copyright was not in any way recognized in the United States, and it was the practice of the United States publishers to reprint in their own country, British copyright books, at very cheap rates. These cheap copies, owing to various difficulties in giving practical effect to the provisions of the law prohibiting their importation, were largely introduced into Canada.

8. Canada (amongst other colonies) made what was at the time accepted by the Queen in Council as sufficient provision for securing the rights of British authors, and thus brought herself under the Act of 1847. The provision made by the Canadian legislature was, that American reprints of British copyright works might be imported into the colony on payment of a customs duty of  $12\frac{1}{2}$  per cent, which was to be collected by the Canadian government, and paid to the British government for the benefit of the authors interested.

9. The Act of 1847 was satisfactory from the point of view of the Canadian reader, because it enabled him to obtain cheap reprints of British copyright books.

10. But from the point of view of British copyright owners, the Act of 1847 was very unsatisfactory, and strong efforts were made to procure its repeal. In March, 1870, at a meeting of the leading authors and publishers, over which the late Earl Stanhope presided, the following resolution was passed, "that a representation be made to the Right Honourable the First Lord of the Treasury, pointing out the great hardships sustained by British authors and publishers from the operation of the Imperial Copyright Act of 1847, and stating the earnest desire they feel that Her Majesty's government may deem it right to propose its prompt repeal."

"Foreign reprints," say the Copyright Commission of 1876, "have been largely introduced into the colonies, and notably American reprints into the Dominion of Canada, but no returns, or returns of an absurdly small amount, have been made to the authors and owners. It appears from official reports that, during the 10 years ending 1876, the amount received from the whole of the 19 colonies which have taken advantage of the Act was only £1,155 13s. 2½d., of which £1,084 13s. 3½d. was received from Canada, and that of those colonies seven paid nothing whatever to the authors, whilst six, now and then, paid small sums amounting to a few shillings.

11. The Canadian publishers also had their grievance. They complained that the effect of the Act of 1847 was to throw the whole of the cheap reprinting business into the hands of United States publishers and printers.

12. In the meantime Imperial legislation took place, which bears on the power of Canada to legislate for herself on the subject of copyright. In 1865 was passed the Colonial Laws Validity Act of that year, which declared by sec. 2, that—

"Any colonial law which is, or shall be in any respect repugnant to the provisions of any Act of parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative."

This enactment merely declared the previous law.

13. In 1867 was passed the British North America Act of that year, which provided for the union of Canada, Nova Scotia, and New Brunswick, and government thereof. Section 91 of this Act specifies copyright among the subjects which are to be within the exclusive legislative authority of the parliament of Canada, as distinguished from the legislatures of the several provinces.



14. To return to the complaints of the Canadian publishers. On the 15th of May, 1868, the Senate of Canada passed a resolution urging "the justice and expediency of extending the privileges granted by the Act of 1847, so that, whenever reasonable provision and protection shall, in Her Majesty's opinion, be secured to the authors, colonial reprints of British copyright works shall be placed on the same footing as foreign reprints in Canada, by which means British authors will be more effectually protected in their rights, and a material benefit will be conferred on the printing industry of the Dominion." This address was supported by the Finance Minister, the late Sir John Ross, in a memorandum addressed to the Secretary of State on the 1st of July, 1868, in which he pointed out that the Canadian public was entirely dependent for its supply of reprints on the United States, to the serious injury of the British author, as not one-tenth part of the reprints entering Canada paid duty; that if Canadian publishers were allowed to reprint, they would supply, not only their own market, but part of the United States market, to the great advantage of the author, as the royalty could be more easily and effectually collected than the import duty.

15. In 1869 the Canadian Government proposed that Canadian publishers should be allowed to reprint the books of English authors without their consent, on paying them a royalty of  $12\frac{1}{2}$  per cent on the published price.

It was alleged that by this means the Canadians would be able to undersell the Americans, and so effectually to check smuggling; and further that the British author secured his remuneration, as the money would be certain to be collected in the form of an Excise duty, though it could not be collected by means of the Customs. Objections, however, were made to the proposal and it was not carried out.

16. On July 29, 1873, Lord Kimberley sent a circular despatch to the governors of the colonies, together with a copy of a despatch which he had addressed to the Governor General of Canada on the question of copyright, and the draft of a bill to amend the Copyright Act of 1842, and asked for suggestions on the bill. Clause 7 of this bill contained provisions for republication of copyright books in a colony under a license. The clause is set out in Appendix A.

17. In January, 1874, the late Mr. Mackenzie, then Premier of Canada, submitted, with the concurrence of the Canadian Privy Council, the following report on the draft bill accompanying Lord Kimberley's circular letter:—

"1. As regards the extending to colonial authors the privileges enjoyed by authors under the Imperial Copyright Act, there seems to be no difficulty in the way. The Canadian Copyright Act of 1868, now in force, gives to English authors all the privileges granted to Canadian authors upon the simple condition of publishing in Canada; and an alteration in the English Copyright Act in the same sense would be accepted as a boon.

"2. As to the question of reprints of copyrights, there ought to be four different interests at stake which are somewhat in conflict, namely, the author's interest, the public interests, the publisher's interest, and the book trade interest.

"3. The authors contend that they have an undeniable and inalienable right to dispose of their property as they please; the public seems to be satisfied with the supply of books which it now gets; and the book trade also appears disposed to be in favour of things as they are.

"4. These three interests are not advocating, at least for the present, any material change beyond extending to Canadian authors the privileges of the Imperial Copyright Act as before stated.

"5. The publishers, however, although not unanimous in their opinion, are advocating the changes which were embodied in the Canadian Act of 1872, intituled 'An Act to amend the Act respecting copyrights,' which Act has been disallowed in England.

"6. As to the draft submitted of a bill to amend the law of copyright, the undersigned is of opinion that, owing to the intricacy of proceedings therein provided, the operation of such a measure would be attended by difficulties likely to lead to litigation."

"The undersigned, therefore, is of opinion that any change beyond the extending of the privileges of copyright to Canadian authors is not urgent, and that a postponement of the final solution of this complicated question would not be likely to cause detriment to the public interest."

18. In 1875 the Canadian legislature passed a Copyright Act giving power to any person domiciled either in Canada or in any part of the British dominions, or in any country having a copyright treaty with the United Kingdom, to obtain copyright in Canada for 28 years, with a second term of 14 years. The condition for obtaining such a copyright was to be that the book should be printed and published, or reprinted and\* republished in Canada. There is a saving (s. 6) for the importation of books lawfully printed in the United Kingdom. The Canadian copyright thus secured was, so far as it related to books first published in the United Kingdom, in addition to and concurrent, though not contemporaneous, with the copyright throughout the Queen's dominions existing by virtue of the Imperial Copyright Act of 1842. The practical effect of the Canadian Act was to exclude, during the term of Canadian copyright, foreign reprints of such books if they obtained the benefit of the special Canadian copyright by being published and printed in Canada. Under this Act certain works of British authors were published with their consent in Canada at a price not only far lower than that of the British copyright edition, but also lower than that of the competing reprints from the United States, which were thus practically, as well as legally, excluded from Canada.

19. Doubts arose whether the Canadian Act was not repugnant to the Order in Council of 1868 for admitting foreign reprints into Canada, and in order to remove these doubts an Imperial Act (38-39 Vict. c. 53,) was passed to confirm the Canadian Act. In this Imperial Act a section was inserted, at the instance of British copyright owners, prohibiting the importation into the United Kingdom of cheap Canadian reprints having Canadian copyright under the Canadian Act, and thus placing such reprints in the same position as the familiar Tauchnitz editions.

20. The Canadian Copyright Act of 1875 is still in force. It now appears in the Canadian Statute-Book as c. 62, of the Acts of 1886, but seems to have been re-enacted in that year as part of a scheme of statute law revision, in a form which was intended not to affect the validity given to the previous Canadian Act of 1875 by the Imperial Act of the same year.

21. The discussions connected with the passing of the Canadian Act of 1875, and the Imperial Confirming Act of the same year, were the principal grounds for the appointment of the Copyright Commission of 1876. The Copyright Commission, by their report of 1879, dealt at great length with the question of colonial, and especially Canadian copyright.

22. They admitted that it was highly desirable that the literature of this country should be placed within easy reach of the colonies, and that, with this view, the Imperial Act should be modified so as to meet the requirements of colonial readers. They did not propose to interfere with the Canadian Copyright Act of 1875, or with the principle of that law. They recommended that the difficulty of securing a supply of English literature at a cheap price for colonial readers should be met in two ways, first, by the introduction of a licensing system in the colonies, and secondly, by continuing, though with alterations, the provisions of the Foreign Reprints Act.

23. In proposing the introduction of a licensing system they did not intend to interfere with the power possessed by the colonial legislatures of dealing with the subject of copyright so far as their own colonies are concerned. They recommended that, in case the owner of a copyright work should not avail himself of the provisions of the copyright law (if any) in a colony, and in case no adequate provision should be made, by a republication in the colony or otherwise within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the colony, a license might, on application, be granted to republish the work in the colony, subject to a royalty in favour of the copyright owner of not less than a specified sum per cent, on the retail price, as might be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should, they said, be made by such law. They did not feel that they could be more definite in their recommendation than this, nor indeed did they think that the details of such a law

\* In the copy schedule to the Imperial Act of 1875 this runs "reprinted or republished."

could be settled by the Imperial legislature. They would prefer to leave the settlement of such details to special legislation in each colony.

24. As to the Foreign Reprints Act, on careful consideration of the subject, and of the peculiar position of many of the colonies, and after reference to the answers returned by the colonies to Lord Kimberley's circular despatch of the 29th of July, 1873, they were not prepared to recommend the simple repeal of the Act of 1847, and the consequent determination of the power now vested in the Queen of allowing the introduction of foreign reprints into colonies which have made due provision for securing the rights of British authors. They believed that, though the system of republication under a license might be well adapted to some of the larger colonies which have printing and publishing firms of their own, and which could reprint and republish for themselves with every prospect of fair remuneration, it would be practically inapplicable in the case of many of the smaller colonies. These latter, they remarked, now depend almost wholly on foreign reprints for a supply of literature, and to sweep away the Foreign Reprints Act, without establishing some other system of supply, would be to deprive them in a great measure of English books. They, however, thought that it had been proved necessary to amend the existing law, and as the provisions theretofore made in different colonies to which the Foreign Reprints Act had been applied by Orders in Council had failed to secure remuneration to copyright owners, they recommended that there should be power to repeal these orders, and that no future Order in Council should be made under the Act of 1847, till sufficient provision had been made by local law for better securing payment of the duty on foreign reprints to the owners of copyright works. As to what should be considered sufficient security for this purpose they did not go into detail, but merely threw out general suggestions. They recommended that, where an Order in Council had been made for the admission of foreign reprints into a colony, such reprints should not, unless with the consent of the copyright owner, be imported into the colony—

- (1.) where the owner has availed himself of the local copyright law (if any); or
- (2.) where an adequate provision has been made for his remuneration by royalty; or
- (3.) after there had been a republication under the licensing system.

25. As to the admission of colonial reprints into the United Kingdom, after stating the arguments for and against, they were not prepared to recommend the repeal of the section of the Act of 1875 prohibiting that admission. They thought that colonial reprints of copyright works first published in the United Kingdom should not be admitted into the United Kingdom without the consent of the copyright owners, and conversely that reprints in the United Kingdom of copyright works first published in any colony should not be admitted into that colony without the consent of the copyright owners.

26. A Consolidation bill to give effect to the recommendations of the copyright commission was introduced in 1881, but did not become law, and has not since been reintroduced by the government, although consolidation bills have been introduced from time to time by private members.

27. At various times Her Majesty's government have negotiated treaties with continental states for giving copyright in Her Majesty's dominions to books published in those states, and a series of Acts, known as the International Copyright Acts, and Orders in Council under them, have been passed and made, for giving effect to those Treaties.

28. In 1885, Her Majesty's government were engaged in negotiations for the Convention of Berne, the object of which was to create an international union for the protection of literary and artistic works.

29. In the following year was passed the International Copyright Act, 1886, of which the main object was to authorize Her Majesty to accede to the Berne Convention, and to give effect to the convention by passing the requisite Orders in Council. But the Act also made important amendments of the law with respect to colonial copyright. By s. 8 it provided that the British Copyright Acts should, subject to certain exceptions as to registration and delivery of copies, apply to a literary work first produced in a British possession in like manner as they apply to a work first produced in the United



Kingdom. By virtue of this section the author of a book first published in a colony, such as Canada, has copyright throughout the whole of the Queen's dominions. The same section contains a saving (subs. (4)) for the power to pass in any British possession any Act or Ordinance respecting the copyright within that possession of books first published in that possession. Under sec. 9 the Queen, has power by Order in Council to declare that the Act of 1886, and any Order in Council made under it, shall cease to apply to any British possession.

On the 5th January, 1889, the law officers advised that in their opinion the then existing powers of colonial legislature to pass local laws on the subject of copyright in books were probably limited to enactments for registration and for the imposition of penalties with a view to the more effectual prevention of piracy, and the enactments within subsection (4) of sec. 8 of the International Copyright Act, 1886, with reference to works first produced in a colony.

30. The Berne Convention was signed at Berne on the 9th of September, 1886. Under this convention, the states who were parties to it were constituted into a union for the protection of the rights of authors over their literary works, and authors in any of the countries of the union or their lawful representatives were to enjoy in the other countries for their works, whether published in one of those countries or unpublished the rights which the respective laws of those countries granted or might thereafter grant to natives. The enjoyment of these rights was to be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and was not to exceed in the other countries the term of protection granted in the country of origin.

31. By a protocol attached to the convention, Her Majesty's Plenipotentiaries stated that the accession of Great Britain comprised the United Kingdom and also the colonies and foreign possessions of Her Majesty. At the same time, they reserve to Her Majesty the power of announcing at any time the separate denunciation of the convention by India or Canada, or any of the other self-governing colonies. Under article XX. of the convention a denunciation does not take effect until after the expiration of 12 months from its date.

32. On the 28th of November, 1887, an Order in Council was made, adopting the Berne Convention, with respect to the foreign countries parties to the convention. These foreign countries are in the order referred to as the foreign countries of the Copyright Union, and are, with Her Majesty's dominions, referred to as the countries of the Copyright Union. The order came into force on the 6th of December, 1887.

33. Canada expressly assented to the passing of the Imperial Act of 1886, and to the Order in Council of 1887, adopting the Berne Convention.

34. The Imperial Act of 1886, and the Order in Council of 1887, embodied two important principles, the principle of Imperial copyright, namely, that the author of a book first published in any part of the Queen's dominions, thereby obtains copyright throughout the Queen's dominions; and the principle of international copyright, namely, that the author of a book first published in any country of the Copyright Union, thereby obtains copyright in all the countries of the Copyright Union.

35. By virtue of the British law, as completed by the International Copyright Act, 1886, and by the Order in Council of 1887—

- (a.) the author of a book first published in any part of the Queen's dominions, say at London or at Quebec, whether the author is an Englishman, Canadian, Frenchman or American, has copyright in the book throughout the Queen's dominions, for the term allowed by English law, that is to say, for 42 years from first publication, or seven years from the death of the author whichever is longer;
- (b.) the author of a book first published in any foreign country belonging to the Copyright Union, say at Paris, has copyright throughout the Queen's dominions for the same term, or any less term allowed by the law of foreign country for copyright under that law.

36. By virtue of the Berne Convention, and of the foreign laws made in accordance with it, the author of a book first published in any part of the Queen's dominions, say at London or at Quebec, has copyright in every country belonging to the Copyright Union,

for the term allowed by English law, or any less term allowed by the law of the foreign country for copyright under that law. No further registration or formality is required in the foreign country; there is no obligation to reprint or republish; but the mere fact that the work has copyright in Her Majesty's dominions gives it copyright throughout the Union. Copyright includes the exclusive right of translation, if exercised within ten years from publication. The obligation and advantage under the convention are strictly reciprocal, and it consequently follows that any country which imposes an obligation to print or reprint locally as a condition of obtaining copyright in a book first published in any country of the Copyright Union must withdraw from the Union, such a condition being inconsistent with the terms of the convention.

37. In 1889, Canada passed an Act repealing subsection 4 and 5 of the previous Canadian Copyright Act (which sections embodied the conditions for obtaining the especial Canadian copyright), and providing that—

- (a.) Any person domiciled in Canada or in any part of the British possession (an expression which presumably includes the United Kingdom); or
- (b.) Any citizen of any country which has an international copyright treaty with the United Kingdom, in which Canada is included (an expression which would, under existing circumstances, include France, but not the United States, and would cease to include France or any other foreign country if Canada ceased to be a party to the Berne Convention);

may obtain exclusive copyright for his book in Canada for 28 years subject to the following conditions:—

- (1.) That the book is before, or simultaneously with, first publication registered in Canada; and
- (2.) That it is printed and published, or reprinted and republished, in Canada, within one month after first publication elsewhere.

The Act goes on to provide that, if a person entitled to obtain copyright in a book under these provisions does not avail himself of them, any person domiciled in Canada may obtain from the Minister of Agriculture a license (which is not to be exclusive) to publish the book in Canada on paying the author a royalty of 10 per cent on the retail price of each book, published under the license.

Where a license is so issued for a book, and the Governor in Council is satisfied that the book is being published under the license in such a manner as to meet the Canadian demand for it, the Governor General may by proclamation prohibit the importation of copies of the book while the author's copyright is in force.

But the Act—

- (a.) is not to prohibit the importation from the United Kingdom of books copyrighted there, or lawfully printed and published there; and
- (b.) is not to apply to any book in which before the date at which the Act comes into force, copyright has been obtained in the United Kingdom, or in any country of the Copyright Union.

The object of saving (a) is apparently to let in books published in England, whilst keeping out books published in the United States. The object of saving (b) is to protect existing rights.

The Canadian Act of 1889, was to come into force on a day to be named by a proclamation of the Governor General. Such a proclamation has not yet been made.

The Act relates to other subjects of copyright besides books.

38. On 3rd August, 1889, Sir John Thompson, Minister of Justice to the Dominion of Canada, submitted to the Privy Council of Canada, a report containing arguments in support of the Canadian Act on its merits, and in support of the competency of the Canadian legislature to pass the Act. He referred to the provision that the Act was not to come into force until proclaimed by the Governor General, and stated that there was not any intention on the part of the Canadian government to advise the issue of a proclamation bringing it into force, until it had been submitted to Her Majesty's government with the explanations which the Governor General's advisers can present, and until Her Majesty's government should concur in the issue of the proclamation. As to the merits, he argued that the copyright system previously in force under Imperial and

Canadian legislation had been found to be most unsuitable to Canada, and that the Berne Convention was found to increase the causes of complaint which existed under the previous law. Under that law, he observed, every work copyrighted in Great Britain, has copyright protection without the requirement of publication in Canada. Under the protection of this law United States authors secure copyright in Great Britain and her possessions, by publishing in England (sometimes by publishing a limited edition not intended to supply the market, and not sufficient therefor) and thus secure control of the Canadian market, while a Canadian cannot obtain such copyright privileges in the United States.

"The rights which British authors and publishers have in British possessions under this condition of the law, have been greatly abused by the sale of their copyright privileges to American publishers, and their refusal to sell to Canadian publishers on like terms. By this means United States publishers have been enabled to command the Canadian market under the provisions of legislation which were not intended for their benefit, but for the benefit of the British author and publisher. The prices of American reprints are so low that the British publications have no chance of competing with them in Canada, and, Canadian reprints being prohibited by the copyright law, the business of reprinting for Canadian readers is thus to a great extent thrown into the hands of American publishing houses, to the very great detriment of the publishing interests of Canada.

"These evils," he went on to say, "would be augmented by the provisions of the 'Berne Convention, which extends the copyright privileges without publication in British possessions to authors of any country which has joined, or may join, the Copyright Union formed by that convention.

"For the benefit conferred on Canadian authors (who are comparatively a very limited class) of copyright in the countries comprised in the Berne Convention Union, the business of publishing in Canada will be repressed as to works published in all these countries, and the United States publishers will be free from any restrictions of that kind, not only as to the vast markets of their own country but to Canada as well."

He submitted that the royalty provision of the Act in favour of the holder of British copyright was reasonable, and afforded ample facilities for collection. The government of Canada would, he said, be prepared to submit to Her Majesty's government the regulations which might be adopted under the Act for securing the collection of the royalty and the payment thereof to the proper parties.

He observed, as regards the policy of permitting republication in Canada in consideration of such a royalty in favour of the holders of the copyright out of Canada, that, under existing legislation, the importation of foreign reprints into Canada is permitted, on the imposition of a customs duty in favour of the copyright holder.

The Act of last session, he said, would make the same provision in favour of the Canadian publisher, but under regulations which will restrain the influx of foreign reprints and afford a better means of collecting the compensation to the copyright holder.

On the question of the competency of the Dominion parliament to pass the Act he argued at some length that such a power existed under the British North America, Act, 1867.

He did not contend that the Canadian legislation would be consistent with the Berne Convention, and he admitted that before the proclamation bringing the Act into operation could be issued, Her Majesty's government must be asked to give the requisite notice of denunciation on behalf of Canada, and that a year's delay must elapse after that notice, and that an order of the Queen in Council must be obtained for releasing Canada from the operation of the statute which makes the Berne Convention operative throughout the Empire.

39. Sir John Thompson's report received the concurrence of the Committee of the Canadian Privy Council, and was forwarded, with the Act of 1889, to the colonial office by a despatch dated 26th August, 1889.

40. On the question of the competency of the Canadian parliament to pass the Act of 1889, Lord Knutsford took the opinion of the law officers of the Crown, who reported



on December 31, 1889, that in their opinion the powers of legislation conferred on the Dominion parliament by the British North America Act, 1867, do not authorize that parliament to amend or repeal, so far as relates to Canada, an Imperial Act conferring privileges within Canada, and that in their opinion Her Majesty should withhold her assent to the Canadian Act of 1889.

41. On the 25th of March, 1890, Lord Knutsford sent a despatch to Lord Stanley of Preston, the Governor General of Canada, in which he expressed his regret that he was unable to authorize the Governor General to issue a proclamation to bring the Canadian Act of 1889 into force. Lord Knutsford referred to the advice of the law officers as to the competency of the Dominion parliament to pass the Act. With respect to the merits of the Act, he called attention to two provisions to which special objection was felt by British copyright owners. These two provisions were the limitation of one month for reprinting and republication, and the power to print and publish under colonial licenses.

42. Meanwhile Newfoundland had been legislating on somewhat similar lines to Canada. In 1888, Newfoundland passed a Copyright Act which was held to exceed its legislative powers, and was on that ground disallowed. In 1890, it passed a similar Act more limited in its terms, giving Newfoundland copyright for 28 years, to an author domiciled in Newfoundland, on condition that his book is printed or published in Newfoundland. This Act was referred to the law officers for their opinion, and they reported on 4th March, 1891, that they had examined the Act, and being of opinion that its provisions ought to be construed as relating to works first published in Newfoundland they thought Her Majesty's assent need not be withheld, but that the Act might be permitted to come into operation. They suggested, however, that it should be pointed out to the Newfoundland authorities that if sec. 5 (which contained the printing condition) should be judicially interpreted to include works other than those first printed and published in Newfoundland the Act would be inconsistent with the Imperial statutes, and further legislation would be necessary.

43. On 14th July, 1890, Sir John Thompson, being then in London, wrote a long letter to Lord Knutsford, in which he recapitulated the history of copyright legislation with respect to Canada, and the arguments in support of the Canadian proposals, expressed little hope of any satisfactory copyright arrangement being made with the United States, and concluded by asking that a final decision on the case of Canada should no longer be postponed to await the action of the United States. In connection with this point he urged—

"(1.) That the present policy of making Canada a market for American reprints, and closing the Canadian press for the benefit of the American press in regard to British copyright works, has a direct tendency to induce the United States to refuse any international arrangement :

"(2.) That, inasmuch as the existing Canadian copyright law affords protection to the copyright holder in every country which may make a treaty with Great Britain, it cannot it suggested, as it once was, that self-government in Canada on this subject would in the least impede negotiations with the United States for an international arrangement."

44. In March, 1891, the legislature of the United States passed an Act which gave American copyright in a book, to an author being a citizen or subject of a foreign state or nation on condition that two printed copies of the book, printed from type set within the limits of the United States must be delivered or deposited in accordance with the requirements of the Act on or before the publication of the book. Section 13 provides that the Act is only to apply to a citizen or subject of a foreign state or nation—

(a.) If such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to its own citizens ; or

(b.) When such foreign state or nation is party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party to the agreement.

The existence of either of these conditions was to be determined by the President of the United States, by a proclamation issued from time to time as the purposes of the Act might require.

The Act was to come into force on the 1st of July, 1892.

45. In reply to an inquiry from the United States minister, Mr. Lincoln, the Marquess of Salisbury on 16th June, 1891, wrote as follows:—

“Her Majesty’s government are advised that, under existing English law, an alien by first publication in any part of Her Majesty’s dominions can obtain the benefit of English copyright, and that contemporaneous publication in a foreign country does not prevent the author from obtaining English copyright;”

“That residence in some part of Her Majesty’s dominions is not a necessary condition to an alien obtaining copyright under the English copyright law; and

“That the law of copyright in force in all British possessions permits to citizens of the United States of America, the benefit of copyright on substantially the same basis as to British subjects.”

46. On the 1st July, 1891, the President of the United States proclaimed that the first of the conditions specified in sec. 13 of the Act of Congress was fulfilled in respect to the citizens or subjects of (amongst other countries) Great Britain.

47. Accordingly, by virtue of the American Copyright Act, and of the President’s proclamation, which, however, is revocable, the author of a book first published in any part of the Queen’s dominions, say at London or Quebec, *and printed in the United States*, has, on compliance with the requirements of the Act as to delivery or deposit, copyright in the United States for the term recognized by the law of the United States

48. On 19th, December 1891, Mr. Blaine wrote to Sir Julian Pauncefote stating that the government of the Dominion of Canada refuses to admit citizens of the United States to the privilege of registration of copyright in Canada on their complying with the conditions of printing and publishing in Canada, under the assurance given by Her Majesty’s government, and under the proclamation of the President, the ground of refusal appearing from the letter of the registrar of the department of Agriculture at Ottawa to be that the United States’ Act and the President’s proclamation do not constitute an international copyright treaty, and that therefore citizens of the United States cannot register under the Canadian Act. Mr. Blaine asks for “an explanation of this important discrepancy between the assurances given by Her Majesty’s government and the course of the Dominion government in the matter of the copyright privilege of citizens of the United States. The declaration of Lord Salisbury,” he observes, and its acceptance by the United States government constituted an international arrangement which this government desires to observe and maintain in its entirety, and I should much regret if any untoward circumstance should constrain its abandonment or essential qualification.”

49. We are now in a position to consider how far the Canadian Act of 1889 is consistent—

(a.) With the Berne Convention;

(b.) With the arrangement with the United States; and

(c.) With Imperial legislation;

and how far the grievances which it proposes to meet are substantial, and the proposals which it embodies are satisfactorily on their merits.

50. Sir John Thompson admits, as has been seen, that the Canadian Act is inconsistent with the Berne Convention, and that, consequently, a necessary condition precedent of its obtaining the force of law, is the withdrawal of Canada from that convention.

Under sec. 9 of the Act of 1886, the Queen has power, by Order in Council, to declare that the Act of 1886, and the Order of 1887, shall cease to apply to any British possession.

The Queen can, therefore, on the application of Canada, make an Order, directing that the Act of 1886, and the Order of 1887 shall cease to apply to Canada. But the Act and Order stand or fall together, and if Canada excepts herself from the Act, she must except herself from the Order also, and *vice versa*.

If, therefore, such an excepting Order is made for Canada, the effect will be as follows:—

The author of a book first published in London will still, by virtue of the Imperial Acts before 1886, have copyright in Canada.

But the author of a book first published in Canada will cease to have copyright in the United Kingdom or in Australia, or in any country belonging to the Copyright Union. And the author of a book first published in Australia, or in any other British possession except Canada, or in France, or in any other foreign country belonging to the Copyright Union, will cease to have copyright in Canada.

If Canada presses for withdrawal from the Berne Convention, her request cannot well be refused. But her withdrawal would be a matter for much regret, since it would strike a serious blow at the policy of imperial and international copyright embodied in the legislation of 1886. It would be a retrograde measure which would commit Canada to a policy of isolation, and of antagonism to the community of civilized states who have become parties to the Treaty of Berne.

Deprivation of Canadian copyright might be seriously detrimental to the interest of Australian authors, say, for instance, of a Melbourne novelist whose works are likely to obtain extensive circulation in Canada. If, however, the interests of publishers or printers were allowed to prevail over those of authors, the lead given by Canada would not improbably be followed by other colonies, and thus the whole system of Imperial copyright would be broken up.

As has been seen, even if Canada were to denounce the Berne Convention, a year must elapse before any Canadian legislation inconsistent with the convention could take effect.

51. The grounds of the Canadian contention that United States authors and publishers are not entitled to the benefit of the Canadian copyright under the Canadian Act of 1875, are not fully before us, but the contention seems to be technically correct. Moreover the inconsistency between the Canadian action and the assurance given by Her Majesty's government to the President of the United States, is perhaps more apparent than real, for refusal to register under the Canadian Act apparently does not deprive a book first published in any part of Her Majesty's dominions (including Canada) of the copyright to which it is entitled in Canada as well as in the United Kingdom under the Imperial Acts of 1842 and 1886. Under the Act of 1842 a book first published in the United Kingdom, has copyright in Canada, and Canadian legislation is not needed to give, and cannot take away, that copyright. But under that Act a book first published in Canada had no copyright, and colonial legislation was required to give such copyright. Consequently for the protection of such books the Canadian Copyright Act was necessary, though it could not operate beyond the limits of the colony. But since the passing of the Act of 1886, which gives copyright to books first published in any part of the Queen's dominions, a Canadian Copyright Act is no longer necessary, and the only effect of the Canadian Act of 1875 appears to be to prevent the importation of unauthorized reprints under the Foreign Reprints Act\*. The Canadian Act of 1875 is so worded as to give rise to misconception on this point, and the Act of 1889, if confirmed by Her Majesty's government after the assurance given to the government of the United States in 1891, would give rise to similar misconception and misunderstanding. Of course, if Canada were to withdraw from the operation of the Act of 1886, and still more if she were allowed to withdraw from the operation of the Act of 1842, there would be not merely a formal but a substantial inconsistency between her legislation and Lord Salisbury's declaration.

52. The Canadian Act of 1889 is, as has been seen, inconsistent with Imperial legislation, apart from the effect of the Imperial Act of 1886, and therefore could not obtain the force of law without an Imperial confirming Act.

53. To the passing of an Imperial Act confirming the Canadian Act, in its present form, there are obvious objections.

It would involve abandonment of the policy of international and Imperial copyright, which Her Majesty's government adopted, and to which Canada assented only six years ago.

\* If registration is required before proceedings can be taken for infringement of this right, and if the Canadian Act does not provide for registration by a United States author he can entitle himself to the remedy by registering at Stationers' Hall in London (see 49 & 50 Vic. c. 33, s. 8).



It would be at least open to the charge of being inconsistent with the declaration as to the law of the United Kingdom and the British possessions, which was made to the United States last year, and on the faith of which the United States admitted British authors to the benefit of their copyright law.

It would be inconsistent with the policy of making copyright independent of the place of printing, which Her Majesty's Government have for many years been urging the United States to adopt.

It would impair the rights in Canada, of British authors, by whom the Canadian market is principally supplied.

On these grounds, amongst others, a bill for such an Act, if introduced into the British parliament, would, we apprehend, be vehemently opposed, and would have very little chance of becoming law.

54. The Canadian case may be looked at from the point of view of the Canadian reader, of the Canadian author, and of the Canadian publisher and printer.

It is doubtful whether the Canadian reader has under existing circumstances any ground of complaint at all. Under the operation of the Foreign Reprints Act he is abundantly supplied with cheap reprints, and it cannot matter to him, as a reader, whether these reprints are produced in Canada or in the United States. It is the British author and publisher who have to complain of the Foreign Reprints Act, and the reality of their grievances was admitted by the Copyright Commission of 1876.

The Canadian author may perhaps be treated as belonging rather to the future than to the present. But nothing can be more detrimental to his interests than legislation which, like the Canadian Act of 1888, would isolate Canada from civilized communities which have adopted the principles of the Berne Convention, and would deprive their authors of copyright in every country outside their own borders.

The present demand for legislation on the lines of the Canadian Act of 1889 appears to come, not from the Canadian reader or author, but from the Canadian publisher and printer, who feel severely the competition of their rivals over the United States border, and wish to protect themselves by excluding their rivals' wares. The arguments in their behalf are to be found in Sir John Thompson's report of 1886 and letter of 1890.

It may be doubted whether there is any foundation for his suggestion that the grievances of the Canadian publishers have been augmented by the Berne Convention. Before that Convention, countries like France, which had copyright treaties with the United Kingdom, were entitled, under those treaties and the International Copyright Acts, to copyright in Canada.

Nor does it appear that the effect of the recent American Act will be to increase the inducement to American publishers to reprint British books. Before the Act they could reprint any such book freely; since the Act they must make arrangements with such authors as take advantage of the provisions of United States legislation. What the Act really does, is to increase the inducements to British authors to enter into such arrangements.

And the real grievance of the Canadian publishers is that they are undersold by competitors, who have the advantage of larger capital and a larger market, and in whose favour protective legislation is enforced against their weaker rivals.

The restrictive conditions attached to United States copyright by United States legislation, make the demand for the imposition of corresponding restrictions on Canadian copyright, and the grant of countervailing facilities for Canadian reprints at least intelligible.

It must, however, be remembered that there is the same difficulty here as in other cases, in reconciling the rival policies of cheapening wares to the consumer and protecting the producer. What the Canadian reader wants is to get cheap books wherever printed. What the Canadian publisher and printer want is to keep out books, cheap or otherwise, not printed or published at their own establishments. The legislation for which they ask could hardly lower, and might possibly raise, the price of books to the Canadian reader. The simplest and most effectual mode of lowering the price of Canadian books would be to remove or reduce the Canadian import duty of 15 per cent on books.

55. Is it not, however, possible to devise some form of legislation which would meet Canadian grievances, without running counter to the policy affirmed in 1886, or imperilling the arrangement with the United States? Admitting, as we must, that the present state of the Canadian law is unsatisfactory, and that Her Majesty's government may fairly be asked to consider whether any means can be found for meeting the Canadian demands, the course which seems open to the least objection would be that which would follow most closely the lines indicated by the report of the Copyright Commission.

56. It might be conceded that on proof of a book first published in the United Kingdom, and by reason of such publication having copyright in Canada, not being produced within a reasonable time either in the United Kingdom or in Canada, at such a price as to meet the Canadian demand, there should be power to grant a license for its publication in Canada on the terms of paying a royalty to the copyright owner. But this power should be checked by more effective safeguards than are provided by the Canadian Act of 1889, and should be made subject to the conditions corresponding as closely as practicable to the suggestions of the Copyright Commission. Twelve months might be allowed as a reasonable time for cheap reproduction, and during that time the Imperial copyright should remain unimpaired. The amount of the royalty might perhaps be 15 per cent, so as to correspond with the amount of the existing import duty on books. The royalty might be levied by means of a stamp on each copy, and if unstamped books are offered for sale they should be liable to seizure. These provisions should be embodied in the Act itself, and not in regulations made under it.

Provisions to this effect would require Imperial legislation to confirm them. They would be open to objection from the point of view of the copyright owner. They would possibly be inconsistent with the views of the signatories of the Berne Convention as to the rights which copyright should involve. But they would apparently not be in conflict with the terms of the convention itself, for the convention merely stipulates that foreign copyright owners are to be entitled to the same rights and privileges as British copyright owners, and, if the rights of British copyright owners are cut down by such licenses, foreign copyright owners are not entitled to complain of their rights being cut down to a similar extent. Nor would they conflict with the arrangement with the United States.

57. It is suggested that such Canadian legislation as is required should be confined to books. Copyright in musical, dramatic, and artistic works raises other and very difficult questions.

58. If any further legislation is required for the benefit of Canadian publishers and printers, perhaps Canadian statesmen may suggest it. Several suggestions made to us are open to objection on the ground of conflicting either with the treaty of Berne or with the declaration made to the United States. But possibly something might be done by an amendment of the Canadian Customs Acts following the lines of section 42 of the Customs Law Consolidation Act, 1876 (39 & 40 Viet., c. 36.) The policy of that section has been much criticised and is open to serious objection, but so long as it is maintained in the United Kingdom, it is a ground for defending an enactment of similar principle in a colony.

59. If Canada is allowed to grant licenses for the reprinting of British copyright books, either the Foreign Reprints Act should cease to apply to Canada, or at least she ought, in accordance with the recommendations of the Copyright Commission, to make better provision by law for securing to the owners of copyright works, the payment of the duty upon such foreign reprints as would be still admitted into the colony, and there should be power, in the event of such provision not being made, to revoke the existing Orders in Council under which foreign reprints are so admitted.

We have the honour to be, sir,

Your obedient servants,

BALFOUR OF BURLEIGH,  
H. G. BERNE,  
JOHN BRAMSTON,  
C. P. ILBERT.

20th May, 1892.

## APPENDIX A.

*Extract from Draft Bill accompanying Circular Letter of 1873.*

"7. Where it appears to Her Majesty in Council that in any British possession effectual and reasonable provision has been made by an Act of such British possession for all the following objects, namely,—

- "(a.) For the registration and protection in such British possession, of books first published out of such British possession, and entitled to copyright therein ;
- "(b.) For collecting and remitting the percentage payable under this Act upon reprints of such books sold in pursuance of a license under this Act in such British possession ;
- "(c.) For making to one of Her Majesty's principal Secretaries of State, to be laid before parliament, returns of the numbers and prices of reprints of the said books sold in such British possession, and such other particulars with respect to those reprints as the Secretary of State may require ;
- "(d.) For preventing the importation into such British possession of foreign reprints except according to this Act ;
- "(e.) For imposing, collecting, and remitting a reasonable percentage upon all foreign reprints imported into such British possession according to this Act ;
- "(f.) For the periods directed by this section to be provided by an Act of the British possession, and the otherwise carrying into effect of this section ; and
- "(g.) For any other objects for which, in the opinion of Her Majesty in Council, provision ought for the purposes of this Act to be made ;

"Her Majesty may, by Order in Council, direct that, from and after the day of the date of the Order, or such later day as may be specified in the Order (which day is in this Act referred to as the commencement of the Order), this section shall apply to such British possession, and thereupon, so long as the said Order remains in force, the following provisions of this section shall apply in such British possession to every book first published out of such British possession after the commencement of the Order and entitled to copyright therein, (that is to say) :—

"(1.) If within such reasonable period after the first publication of the book as may be provided by the said Act of the British possession the book is not published in such British possession in such number and manner as are suitable for general circulation therein, any person may apply to such court in the British possession as may be fixed by the last-mentioned Act, for a license to publish such book, and the court may, if it seems just, grant such license, subject to the provisions of this Act, upon such terms and subject to such conditions as the court thinks just ;

"(2.) The application shall be made, and the proceedings upon such application shall be conducted, in such a manner as may be from time to time directed by the law of such British possession, or, if there is no such law, as the court by general orders or rules from time to time directs ;

"(3.) An appeal to Her Majesty in Council shall be from any order made by the court in pursuance of this section ;

"(4.) Every such appeal shall be referred to the Judicial Committee of the Privy Council, and shall be dealt with by them as other appeals from courts in such British possession ;

"(5.) An order granting a license shall not be suspended by such appeal, but the person in whose favour the order is made shall be liable to account for profits, or to pay damages as may be directed by Her Majesty in Council when the appeal is decided ;

"(6.) After the expiration of such reasonable period, not being less than six months, from the first publication of the book, as may be provided by the said Act of the British possession, if the book is not then published in such British possession in such number and manner as are suitable for general circulation therein, any person may, notwithstanding anything in this Act, import into such British possession foreign reprints of



such book, subject to the provisions of this Act and of the said Act of the British possession.

"Where the last-mentioned Act is altered by any subsequent Act of the said British possession the Order in Council shall not be affected by such alteration, unless it seem fit to Her Majesty in Council to revoke or alter such order."

## APPENDIX B.

### EXTRACTS FROM REPORT OF COPYRIGHT COMMISSION.

206. We recommend that the difficulty of securing a supply of English literature at cheap prices for colonial readers be met in two ways: 1st, By the introduction of a licensing system in the colonies; and, 2nd, By continuing, though with alterations, the provisions of the Foreign Reprints Act.

207. In proposing the introduction of the licensing system it is not intended to interfere with the power now possessed by the colonial legislatures of dealing with the subject of copyright, so far as their own colonies are concerned. We recommend that in case the owner of a copyright work should not avail himself of the provisions of the copyright law (if any) in a colony, and in case no adequate provision be made by republication in the colony or otherwise within a reasonable time after publication elsewhere for a supply of the work sufficient for general sale or circulation in the colony, a license may, upon an application, be granted to republish the work in the colony, subject to a royalty in favour of the copyright owner of not less than a specified sum per cent on the retail price, as may be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should be made by such law.

208. We do not feel that we can be more definite in our recommendation than this, nor indeed do we think that the details of such a law could be settled by the Imperial legislature. We should prefer to leave the settlement of such details to special legislation in each colony.

209. With regard to the continuance of the Foreign Reprints Act, we have already stated that strong efforts have been made to procure its repeal. In March, 1870, at a meeting of the leading authors and publishers, over which the late Earl Stanhope presided, the following resolution was passed: "That a representation be made to the right honourable the first Lord of the Treasury, pointing out the great hardships sustained by British authors and publishers from the operation of the Imperial Copyright Act of 1847, and stating the earnest desire they feel that Her Majesty's government may deem it right to propose its prompt repeal."

210. We are fully sensible of the weight that must attach to the opinions of persons so qualified to form a judgment on this matter, but upon careful consideration of the subject and of the peculiar position of many of your Majesty's colonies, and upon this point we would refer to the answers returned by the colonies to Lord Kimberley's circular despatch of the 29th July, 1873, we are not prepared to recommend the simple repeal of the Act of 1847, and the consequent determination of the power now vested in your Majesty, of allowing the introduction of foreign reprints into colonies which have made due provision for securing the rights of British authors.

211. We believe that although the system of republication under a license may be well adapted to some of the larger colonies which have printing and publishing firms of their own and which could reprint and republish for themselves with every prospect of fair remuneration, it would be practically inapplicable in the case of many of the smaller colonies. These latter now depend almost wholly on foreign reprints for a supply of literature; and to sweep away the Foreign Reprints Act without establishing some other system of supply would be to deprive them in a great measure of English books.

212. But we are of opinion that it has been proved necessary to amend the existing law, for the purpose of more effectually protecting the rights of owners of copyright,

whilst affording to colonial readers the means of making themselves acquainted with the literature of the day.

213. As the provisions hitherto made in the different colonies to which Orders in Council have been applied, have failed to secure remuneration to proprietors of copyright, we recommend that power should be given to your Majesty to repeal the existing Orders in Council and that no future Order in Council should be made under that Act until sufficient provision has been made by local law for better securing the payment of the duty upon foreign reprints to the owners of copyright works.

214. Probably it would be desirable to grant a certain period to the colonies, for the purpose of enabling them to propose further and better provisions, before such revocation actually takes place. In that case, however, it should be clearly understood that your Majesty is in no way pledged, by the grant of such delay, to issue any fresh Order in Council; and power should be given to your Majesty in Council to revoke, at any time, any future Order in Council, should the provisions of the Colonial law prove practically insufficient.

215. It is perhaps hardly within the scope of this commission to suggest what provisions your Majesty should be advised to consider sufficient, within the meaning of the Act, to secure the rights of the proprietors of copyright. But it appears to us that possibly some arrangement might be effected by which all foreign reprints should be sent to certain specified places in the colony, and should be there stamped with date of admission upon payment of the duty, which could then be transmitted here to the Treasury or Board of Trade for the author. All copies of foreign reprints not so stamped should be liable to seizure, and it is worthy of consideration whether some penalty might not also be affixed to the dealing with unstamped copies.

216. And having regard to the power which we have contemplated for authors to obtain colonial copyright by republication in the colonies and to the licensing system which we have suggested, we recommend that where an Order in Council for the admission of foreign reprints has been made, such reprints should not, unless with the consent of the owner of the copyright, be imported into the colony:—

1. Where the owner has availed himself of the local copyright law, if any;
2. Where an adequate provision, as pointed out in paragraph 207, has been made; or
3. After there has been a republication under the licensing system.

*His Excellency the Governor General to the Marquess of Ripon.*

GOVERNMENT HOUSE, OTTAWA, 10th February, 1894.

MY LORD,—My ministers have had under consideration your lordship's despatch of the 30th June, 1892, transmitting the report of the committee appointed to consider the petition of the Canadian parliament praying that it might be granted wider powers of legislation as regards copyright, and that notice might be given of the withdrawal of Canada from the Berne Copyright Convention, and the approved minute of council of which I have the honour to inclose a copy, received by me to-day, contains an expression of their views upon this despatch.

Your lordship will observe that ministers consider that nothing contained in the report is likely to change their opinion as to the propriety of notice being given with the least possible delay, of the withdrawal of Canada from the Berne Convention, and further press their request that such notice be given.

With regard, however, to the question of the enactment of Imperial legislation to give greater freedom to the Canadian parliament in dealing with questions of copyright, a further report is promised by the government.

I have, &c.,

ABERDEEN.

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*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 23rd January, 1894.*

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The committee of the Privy Council have had under consideration, a despatch, hereto attached, dated 30th June, 1892, from the right honourable the Principal Secretary of State for the Colonies, relating to the address to Her Majesty from the Senate and Commons of Canada praying for Imperial legislation which should explicitly confer upon the parliament of Canada the power to legislate on all matters relating to copyright, without regard to statutes in force when the parliament of Canada was established; and praying further that notice might be given of the withdrawal of Canada from the Berne Copyright Convention.

The Minister of Justice, to whom the matter was referred, observes that the despatch now under consideration states that the petition was ordered by Her Majesty to be taken into consideration by those of Her Majesty's ministers whose departments were more immediately concerned in the subject, and that a committee had been appointed, of leading officials of the Department of Foreign Affairs, of the Department of the Colonial Office, and of the Board of Trade, to consider, with the assistance of one of the parliamentary counsel, the whole question of Canadian Copyright and to report thereon.

The minister also observes that the despatch further stated that, in the view of Her Majesty's government, it appeared to be desirable, before any action should be taken upon this report, that an opportunity should be given to the Dominion of Canada once more to consider the whole subject in the light thrown upon it by the researches of the Committee, and the report was transmitted to his Excellency along with the despatch.

The minister further observes that, having carefully perused the report of the committee referred to, he is opinion that nothing contained therein is likely to change the opinion of your Excellency's advisers as to the propriety of the request which they have pressed on several occasions, and which the parliament of Canada has, on more than one occasion, unanimously endorsed, namely, the request that notice should be given, with the least possible delay, of the withdrawal of Canada from the Berne Convention.

The minister deems it unnecessary to remind your Excellency that Canada has been repeatedly assured that her continuance in any treaty arrangement of this kind would be subject to her desire to withdraw at any time on giving the prescribed notice, and, now that the policy of Canada has been so firmly established and repeatedly pressed upon Her Majesty's government, both by parliament and by your Excellency's advisers, he (the minister) recommends that your Excellency be requested to move Her Majesty's Secretary of State for the Colonies to cause such notice to be given without further delay.

The minister states that he will respectfully submit some observations upon the report of the committee before referred to on the other subject embodied in the address of the Canadian parliament to Her Majesty, namely, the adoption of legislation in the parliament of the United Kingdom giving greater freedom to the parliament of Canada in dealing with the subject of copyright, but he submits that, in the meantime, the notice of withdrawal from the Berne Convention should in any case be given.

The committee advise that your Excellency be moved to forward a certified copy of this minute, if approved to the Right Honourable the Principal Secretary of State for the Colonies.

All of which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,

*Clerk of the Privy Council.*



*His Excellency the Governor General to the Marquess of Ripon.*

GOVERNMENT HOUSE, OTTAWA, 20th February, 1894.

MY LORD,

With reference to previous correspondence relative to the question of copyright in Canada, I have the honour to forward herewith copy of an approved Minute of the Privy Council, which I have this day received, submitting a report by the Minister of Justice in which he recapitulates the history of the question and again urges that steps be taken by Her Majesty's government to remove the restrictions which prevent the Canadian parliament dealing freely with matters relating to copyright.

I have, &amp;c.,

ABERDEEN.

*Report of a Committee of the Honourable the Privy Council approved by His Excellency the Governor General in Council, on the 7th February, 1894.*

The committee of the Privy Council have had under consideration the annexed report of the Minister of Justice, relating to copyright in Canada.

The committee, concurring therein, advise that your Excellency be moved to forward a certified copy of this minute, if approved, and the appended report and annex to the Right Honourable the Principal Secretary of State for the Colonies.

All of which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,

*Clerk of the Privy Council.**To His Excellency the Governor General in Council :*

1. The undersigned, having had under consideration a despatch from Lord Knutsford to your Excellency's predecessor, dated 30th June, 1892, in reply to a despatch of his Excellency Lord Stanley of Preston, of the 19th October, 1891, in which his Excellency transmitted an address to Her Majesty from the Senate and Commons of Canada, praying for Imperial legislation which should explicitly confer upon the parliament of Canada the power to legislate on all matters relating to copyright in Canada without regard to statutes in force when the parliament of Canada was established, etc., etc., has the honour to submit the following observations upon the report which accompanied the despatch of Lord Knutsford, and which had been made by departmental representatives of the Colonial Office, Foreign Office, Board of Trade and Parliamentary Counsel's Office, to the Right Honourable Sir Michael Hicks Beach on the subject of Canadian copyright.

2. It is no doubt, true, as stated in the third paragraph of the report of the committee, that from the point of view of British authors and publishers, the Imperial statute of 1842 was satisfactory to those authors and publishers ; because it gave the British author and publisher a monopoly, by copyright, extending over the Sovereign's dominions, for 42 years from the first publication, or seven years from the author's death. It may be regarded, indeed, as a continuance, for their benefit, of the system which was based on the idea that the colonies were to be preserved only for the benefit of the producers in the British Islands, and that the inhabitants of those colonies had no rights of self-government or otherwise, which were inconsistent with the interests of British producers.

3. The colonial publisher and the colonial reader, however, had every reason to be dissatisfied with the enactment of 1842, and it is not to be wondered at that their representatives made very emphatic protests. Those protests are enumerated and referred to in the letter of the undersigned to Lord Knutsford, dated 14th July 1890, which forms an appendix to this report.

4. The protests and the agitation for redress continued until 1846, when Mr. Gladstone gave warning to the publishing trade in England that they must be induced "to modify any exclusive view which might still prevail in regard to this important subject;" and shortly afterwards a report was made from the Colonial Office to the Board of Trade intimating the decision of the Secretary of State for the Colonies, Earl Grey, that after the repeated remonstrances which had been received from the North American colonies on the subject of the circulation there of literary works of the United Kingdom, he proposed to leave to colonial legislatures the duty and responsibility of enacting laws which they should deem proper for securing the rights of authors and the interests of the public."

5. Earl Grey requested that the Board of Trade should be moved to take "such measures as might be expedient for submitting to parliament, at the ensuing session, a bill authorizing the Queen to extend the royal sanction to any colonial law or ordinance which might be passed respecting copyright, notwithstanding the repugnancy of any such law or ordinance to the copyright law of the United Kingdom."

6. The circular of Earl Grey to the Governors of the North American colonies, which followed, dated November, 1846, announced that this was settled as the policy of Her Majesty's government, and the Governors were informed that a measure to carry out that suggestion would be introduced at the ensuing session. The full text of this circular will be found in the appendix, and it is remarkable that the assurance thus given, of the policy of Her Majesty's government towards the North American colonies, remains unfulfilled to this day, in consequence, it must be assumed, of the influence which two classes—the authors and the publishers in the United Kingdom—were and have been able to exercise with regard to the legislation which had been promised, in relation to a matter so important to Her Majesty's colonies.

7. In paragraph 6 of the report, the committee thus refer to the pledge given by Her Majesty's government to the colonies:

"It was, however, eventually determined not to legislate in accordance with the terms of Lord Grey's despatch, but, instead, to pass the Imperial Act which bears the short title of the 'Colonial Copyright Act of 1847' but is commonly known as 'The Foreign Reprints Act.'"

8. It might be supposed, from this mode of stating the case, that the "determination not to legislate in accordance with the terms of Lord Grey's despatch" was a determination arrived at as the result of an understanding with the colonies, that this measure should be accepted as a substitute for the concession which Lord Grey had promised. This, however, does not appear to have been the case. It was a measure of temporary and partial relief, and it can hardly be supposed that a determination was arrived at by Her Majesty's government, to abandon or repudiate the pledge which had been so formally given, or even to substitute for what had been promised a measure which, while it might satisfy present wants, fell vastly short of what had been promised. The "Foreign Reprints Act" was, no doubt, adopted merely as a measure of temporary relief and until the wider measure could be obtained.

9. Paragraph 6 of the committee's report states that the Act "was satisfactory from the point of view of the Canadian reader, because it enabled him to obtain cheap reprints of British copyright books." It is true that the "Foreign Reprints Act" was, as stated above, a measure of relief to the Canadian reader for the reason given in the paragraph quoted. The legislatures of the colonies were willing to wait a reasonable time for the fulfilment of Earl Grey's promise, and in the meantime to accept the temporary expedient by which the monopoly which excluded British literature from the borders of the colonies, was relaxed in favour of an impost for the benefit of those who had a (statutory) right to that monopoly. In short the Imperial parliament, finding the monopoly so great a grievance, obliged the holders of it to compound for money compensation which the colonist would pay without much expression of discontent, even if it involved the denial to his country, for a time, of the rights of self-government which should have been considered at least as important as the (statutory) rights of copyright holders, and which had been promised in the plainest terms.

10. It was quite obvious, however, that the colonies would not rest satisfied with such a system. The growth and development of their publishing interest would have put an end to acquiescence in the scheme, even if the legislatures had been willing to continue to be denied their proper powers and to be tax-gatherers for a privileged class outside the country.

11. In March, 1870, the British copyright owners, not being satisfied with the proceeds of the taxation on foreign reprints, and desiring their monopoly restored to its full vigour, demanded the repeal of the Foreign Reprints Act.

12. The Copyright Commission of 1876 followed, and in their report of 1879 it was stated that copyright holders had only received, as the result of their taxing scheme, from nineteen colonies which had taken advantage of the Act, £1,155 13s. 2½d.; but it is to be observed that of this sum £1,084 13s. 3½d. was received from Canada, leaving about £71 as the contribution from the other eighteen colonies. Probably the same proportion has been continued since. Great pains have been taken to collect the tax for the benefit of copyright holders, notwithstanding the belief has been growing, from year to year, that the present state of the law is odious and unjust. The copyright holders of the United Kingdom have made suggestions from time to time for improvements of the method of collecting this tax, in order that the proceeds may be augmented, and the government of the Dominion has always made the collections vigilantly and in good faith. They are willing even to adopt improved methods of collection, but they can only offer to do so as part of an improved scheme of copyright, such as that embodied in the Canadian Act of 1889, and by way of an amendment to some such enactment as that, to come into force concurrently with such Act.

13. While, as has been stated, the 'Foreign Reprints Act' gave a measure of relief to the Canadian reading public, it had the effect of creating a monopoly for the publishers of the United States and of preventing the publishing business of Canada from attaining dimensions such as might reasonably have been expected in a country where the whole population is a reading population, and where the practice has always been, with few exceptions, compared with European countries, for the people to buy the books which they read. In spite of this disadvantage the publishing interest has grown very considerably. It has been represented in some former discussions on this question as being small and unimportant. All that seems necessary to be said upon that subject, for the present, is that it is small in comparison with what it should be, and in comparison with what it would be under a proper adjustment of the copyright laws.

14. It is noted in paragraph 14 of the committee's report, that the Senate of Canada adopted an address to Her Majesty in 1868, urging the change which Lord Grey had promised, that the answer thereto on the 22nd of July, 1865, was merely that the question was too important, and involved too many questions of imperial policy for legislation at that session of parliament, and it was then intimated that negotiations with the United States on the subject of copyright required some delay in dealing with the colonies with regard to that interest.

15. The part which negotiations with the United States have played in this discussion with Canada will be referred to hereafter, but it is apparent that for more than twenty years these negotiations have been made use of as a reason for postponing the requests, admitted to have been reasonable, which were presented by the Dominion of Canada and that when an arrangement was eventually made with the United States, the publishers of that country received the benefit of the British copyright monopoly of the colonies, with rights reserved in their favour which were refused to Canada, and the conclusion of that arrangement with the United States is now suggested by the committee, whose report is under review, as a new reason why the demands of Canada should not prevail, because it would interfere with the United States copyright holders who have been presented with the monopoly of Canada for the sale of their publications.

16. Pursuing the narrative, however, it is important to note that the assurances which have been received by Canada from time to time express sympathy with the colonial interests; and that after more than twenty years of inquiry, consideration, discussion, sympathy and promises, it was stated by the Lords of Trade, with reference to that address of the Senate, that the subject was "a matter that called for inquiry"



and that "an endeavour should be made to place the general law on copyright, especially that part of it which concerned the whole continent of America, on a more satisfactory footing."

17. It may be observed here that by the arrangement with the United States "the general law of copyright, in so far as it concerned \* \* \* \* continent of America," was indeed put on a footing more satisfactory as regards the British author and publisher and the United States publisher, but that part of the continent of North America which bears allegiance to Her Majesty has received no consideration in the improvement of the law.

18. The Duke of Buckingham and Chandos on the 31st July, 1868, sending his formal reply to the despatch accompanying the address of the Senate, made the admission, which was not very remarkable at that stage of the discussion, that "the law of copyright generally might be a very fit subject for future consideration."

19. The Canadian government were of the same opinion, and on 9th April, 1869, they transmitted another representation on the subject, but the Board of Trade considered that the Canadian proposal should not be adopted immediately, because nothing could be done for Canada unless the United States were a party to the arrangement, and that "whatever protection should be given to authors on one side the St. Lawrence must, in "order to be effectual, be extended to the other." The equivalent proposition would seem also to be implied, viz., that whatever protection might be given to publishers on one side the St. Lawrence must be extended to the other. Her Majesty's government, however, have not yet carried out those propositions because they have agreed to an arrangement by which the British author or publisher, in order to get the benefit of copyright protection in the United States, is obliged to print his book from type set in the United States, and it yet withholds from Canada the concession of allowing a Canadian publisher to reprint at all, even from plates imported from Great Britain, and on payment of a tax levied in favour of the copyright holder on every copy of the publication.

20. Canada was assured, however, by Earl Granville's despatch of the 20th October, 1869, that at the ensuing session of parliament copyright would be permitted on publication in the colonies, a concession of very slight and doubtful importance. When, under the Berne Convention, a concession in that direction was given, the Colonial author or publisher received his slight privilege only in common with the authors and publishers of all the other countries included in that convention.

21. Attention is again called to the report of the Minister of Finance of Canada in 1870, followed by the request of Lord Kimberley on the 29th of July, 1870, that the views of the Canadian government might be again forwarded in order that Her Majesty's government might give the consideration before the ensuing session—and to the report from the Minister of Finance and of Agriculture, dated 30th November, 1870, in which those views were once more set forth. Consideration seems not to have been given to the information thus asked for and obtained, and on the 14th of May 1872, the views of the Canadian government were again set forth in a report of the same ministers which was adopted and transmitted on the 14th of the same month.

22. After thirty years of reiterated complaints, the Canadian government felt called upon to declare the existing system "wholly indefensible," and to state that the Canadian publishers were being "treated with the greatest injustice." The report of the ministers stated that it had "long been the custom of owners of British copyright to sell to "American publishers advance sheets of their works, and when Canadian publishers" had "offered to acquire copyright in Canada by purchase, they had been told that the arrangements made between the British and American publishers were such as to prevent negotiations with Canadians."

23. In the same year a Copyright Act was passed by the Canadian parliament and forwarded for Her Majesty's assent. It was based on the same principles as the Canadian Copyright Act of 1889. The assent was withheld.

24. The undersigned does not propose, in the course of these observations, to detail at length the various negotiations which have taken place. They will be found more fully stated in the appendix hereto. Attention is called to them in this place chiefly because many which seemed to the undersigned to be of importance are not men-

tioned in the report of the committee, and because it seems important to notice that from the commencement of the agitation in 1842 down to the present year, the representations from the North American Colonies have met with the same response from Her Majesty's government, namely, an admission that grievances existed as stated, promise of redress—followed by expressions of determination to consider the subject and a declaration that the measure proposed by the parliament of Canada to lessen the grievances was beyond the powers of that parliament and must be authorized by an Act of the Imperial parliament in order to be effectual.

25. The despatch of Lord Carnarvon, dated 15th June, 1874, is an illustration of the progress which the agitation had made since Her Majesty's government, in 1846, with a full knowledge of the whole subject, had promised to confer full legislative powers at the ensuing session. His lordship stated then (twenty-eight years after Lord Grey's circular despatch) that he was aware "that the subject of Colonial copyright had long been under consideration," that he was ready "to co-operate" and that he had "a confident hope" that Her Majesty's government might, "without difficulty be able to agree on the provisions of a measure which, while preserving the rights of owners of copyright works" in the United Kingdom "under the Imperial Act, would give effect to the views of the Canadian government and parliament."

26. One of the most important points in the narrative is that mentioned in paragraph 21 of the committee's report, namely, the appointment of a Royal Commission on Copyright in 1876, and also the report of that commission in 1879. It appears necessary to point out that the report of that commission recommends the adoption of the principle on which is based the Canadian Copyright Act of 1889, namely, the establishment of a licensing system for republications of copyright works in the colonies and the collection of a tax in favour of the copyright holder as a compensation.

27. In pursuing the course of discussion followed by the committee, whose report is under review, it seems proper to make some reference to that branch of the subject which refers to copyright arrangement with other countries; and first to notice the position of your Excellency's government on the subject of the Berne Copyright Convention.

28. At the outset, however, it may be well to state the ground upon which the Canadian government base their request for the withdrawal of Canada from that convention. When assent was given, on the part of the Canadian government, to be included in that convention, one of the considerations which prevailed was the confidence in the assurances given by Her Majesty's government with regard to the amelioration of the law of copyright as it affected Canada, notwithstanding the great delay which had occurred. But the principal consideration was the fact that Canada could withdraw from the convention on a year's notice to that effect being given to the countries included in the convention.

29. The Canadian government afterwards formally requested Her Majesty's government to give notice of the withdrawal of Canada. That request not having been complied with, an address of both houses of parliament to Her Majesty was unanimously passed in the session of 1891, requesting that the notice be given. Recently your Excellency's government has forwarded a renewed request that the notice be given without further delay. The undersigned respectfully submits that the reasons which induce persistence in this determination to withdraw from the convention are in the judgment of the parliament and government of Canada.

30. Parliament has complete cognizance of Canadian interests in such matters and has unanimously endorsed the request of your Excellency's advisers that notice should be given.

31. The statement was made by the undersigned, in a previous report, that the condition of the publishing interest in Canada was made worse by the Berne Convention. That statement is adhered to. The monopoly which was in former years complained of in regard to British copyright holders is now to be complained of, not only as regards British copyright holders, but as to the same class in all countries included in the Berne Copyright Union. Canada is made a close market for their benefit, and the single compensation given by the convention for a market of five millions of reading people is

the possible benefit to the Canadian author, whose interests seem not to have been thus cared for on account of a very high estimate of their value, because the committee whose report is under review describe the Canadian author as "belonging rather to the future than to the present." Without accepting this estimate as quite accurate it may at least be said that the Canadian parliament may be trusted to care for the interests of Canadian authors. The Berne Convention had in view considerations of society which are widely different from those prevailing in Canada. In Europe the reading population in the various countries is comparatively dense; in Canada a population considerably less than that of London is dispersed over an area nearly as large as that of Europe. In the cities of Europe, especially in Great Britain, the reading public is largely supplied from the libraries, while, in Canada, as a general rule, he who reads must buy. In European countries the reading class forms but a fraction of the whole population, while in Canada it comprises nearly the whole population.

32. If reasons against the continuance of Canada in the convention were called for, many would suggest themselves, but the undersigned does not understand that your Excellency's government is called upon to give those reasons or to present an argument to justify the determination of Canada to withdraw from the convention.

33. No enactment in Canada to give effect to the Berne Convention has ever been passed, although some enactment would be necessary in order to make the system operative and effectual here.

34. As regards what is called the "arrangement" made between Her Majesty's government and the United States, some observations seem specially called for, in view of the position taken by the committee whose report is being considered. In March, 1891, Congress passed the present copyright law. That law gives copyright in the United States to any author, whether a citizen of the United States or a subject of a foreign state, on condition that two printed copies of the book, printed from type set within the limits of the United States, be deposited (in accordance with regulations prescribed), on or before the publication of the book. It is necessary, however, in the case of the subject of a foreign state, to show that his state permits citizens of the United States to have the benefit of copyright on the same terms as her own citizens. That requirement, of course, is easy of fulfilment in the case of Great Britain, for the Copyright Act of 1842 permitted foreigners to obtain copyright, running not only in the United Kingdom but throughout Her Majesty's dominions, on mere publication in Great Britain, without any condition as to the type being set within the Queen's dominions.

35. It seems, from the Committee's report, to be considered that Lord Salisbury, on the 15th June, 1891, made an agreement with the United States which is an obstacle in the way of the Canadian request for improved copyright legislation being granted. If such could be supposed to be the case the contention of Canada in this respect would present a far more serious ground of complaint than has been yet stated. The contention would be, that after promises of redress had for many years remained unfulfilled and at last fulfilment postponed on the explanation that such redress would be considered in negotiations for an international arrangement with United States, Canada would now have to be informed that her request cannot be entertained or considered any longer, because the international arrangement with the United States precludes any consideration of her interests.

36. The undersigned submits, however, that such is not a correct statement of the facts, or a reasonable conclusion from them. Mr. Lincoln, the United States minister at London, appears to have asked information from Lord Salisbury as to the state of the copyright law in the United Kingdom. The reply of Lord Salisbury was that an alien, by first publication in any part of Her Majesty's dominions, could obtain the benefit of British copyright and that contemporaneous publication in a foreign country did not prevent the author from obtaining copyright in Great Britain, that residence in Her Majesty's dominions was not a necessary condition, and the law of copyright in force in all British possessions permits citizens of the United States of America to have the benefit of copyright on the same basis as British subjects.

37. It is submitted that in making this statement Lord Salisbury was merely stating what he believed to be the condition of the law of copyright at that time. He was not



making any treaty nor any arrangement with regard to copyright, although, probably, for convenience of expression the term, "arrangement with the United States" has been used in the report of committee, and also in course of these observations. The committee in their report seem to treat Lord Salisbury's answer (as to the condition of the existing law), as an agreement and almost as equivalent to an undertaking that the law should never be changed. Otherwise it is difficult to understand such expressions as are contained in paragraph 51: "The Act of 1889" (meaning the Canadian Act), if confirmed by Her Majesty's government, after the assurance given to the government of the United States in 1891, would give rise to misconception and misunderstanding." "Of course if Canada were to withdraw from the operation of the Act of 1886, and still more if she were allowed to withdraw from the Act of 1842, there would be not merely a formal, but a substantial inconsistency between her legislation and Lord Salisbury's declaration."

38. It is not suggested that Lord Salisbury's declaration was that the law should not be changed, but that seems to be implied. If such is indeed to be inferred from Lord Salisbury's reply to Mr. Lincoln, it would be well to inquire how long his declaration was intended to continue in force or is to be construed as being in force? Is it possible that the Convention of Berne, which was to endure until a year after denunciation, in so far as Canada was concerned, was intended by Lord Salisbury to be made perpetual in its application to Canada, by his making a statement of the law of the United Kingdom to Mr. Lincoln?

39. It seems perfectly obvious, notwithstanding the contrary view suggested by the report of the committee, that Lord Salisbury merely informed Mr. Lincoln that on the 16th of June, 1891, the first condition above set forth, in the United States Copyright law, was complied with by the state of British law at the time. Lord Salisbury's object was to show Mr. Lincoln that Great Britain permitted citizens of the United States the benefits of copyright on substantially the same basis as to her own citizens. The Canadian government and parliament ask for no other condition of affairs; and Lord Salisbury's statement to Mr. Lincoln will still be good, and the reasonable requirements of the United States government will still be satisfied if the Canadian Act of 1889 be ratified, because American holders of copyright in Great Britain will be on the same footing as British copyright holders.

40. Before the so-called "arrangement with the United States" was made, in a letter which the undersigned had the honour to write to Lord Knutsford, on the 14th of July, 1890, it was suggested, as is quoted in paragraph 43 of the committee's report:

"(1.) That the present policy of making Canada a market for American reprints, and closing the Canadian press for the benefit of the American press, in regard to British copyright works, has a direct tendency to induce the United States to refuse any international arrangement."

"(2.) That inasmuch as the existing Canadian copyright law affords protection to the copyright holder in every country which may make a treaty with Great Britain, it cannot be suggested, as it once was that self-government in Canada on this subject would in the least impede negotiations with the United States for an international arrangement."

41. This prediction has been abundantly fulfilled since the passage of the United States Copyright Act. The United States publishers now insist in making their arrangements with British authors and publishers, on a condition that Canada be included in the territory disposed of. Furthermore, the American purchasers of British rights refuse to Canadian publishers any arrangement for the publication of reprints in Canada. In this way the copyright holder outside of Canada not only enjoys in Canada a monopoly which the Copyright Act of 1842 gave him, but can, and does, sell to foreigners that monopoly in Canada, and the foreign purchaser thus acquires the right, under the Statute of 1842 and the Berne Convention Act of 1866, to lock the Canadian presses in order that his own may be kept in operation to supply Canadian readers.

42. It should be observed that by the Canadian Copyright Act of 1889, Canada asks less than the United States has obtained. The Congress of the United States has demanded that, before a British subject can obtain copyright in the United States, his

book shall be printed from type set within the limits of the United States. Great Britain not only accedes to this demand, but permits a citizen of the United States to obtain copyright of his work in England, on production of his work there, printed on the type set in the United States, and thus the United States publisher at the same secures copyright in both countries for a book produced from American type. The Canadian Act would permit type to be set in England and the plates imported, and on printing therefrom, copyright would be granted in Canada, if the printing were done within one month of the original publication elsewhere; but failing such publication, the British copyright holder would be secure in his ten per cent royalty if the book should be republished (under license) in Canada.

43. In view of this state of affairs it is not accurate to say, as seems to be suggested in paragraph 54, section 4 of the report under review, that "the present demand for legislation on the lines of the Canadian Act of 1889, appears to come, not from the Canadian reader or author, but from the Canadian publisher and printer, who feel severely the competition of rivals in the United States, and wish to protect themselves by excluding their rivals' wares."

44. What the Canadian publishers principally complain of, under the present state of affairs, is that they are not allowed to compete with publishers of the United States, inasmuch as the British copyright holders dispose of their rights to American publishers on condition that the latter shall have a monopoly of the Canadian market.

45. Another statement contained in the same paragraph of the report (section 6), indicates a want of information as to the facts, viz., the statement "That the effect of the recent American Act would not be to increase the inducement to American publishers to reprint British books. Before the Act they could reprint any such books freely; since the Act they must make arrangements with such authors as take advantage of the provisions of United States legislation." The fact is that English books are eagerly sought for by United States publishers. They can afford to pay high prices in view of the fact that the market of Canada is included in their purchases. The English authors are induced also to seek purchasers in the United States, in order to obtain copyright there and to get their books printed from United States type, which is a condition imposed there, although not imposed in Britain on the United States author when he seeks copyright protection throughout the British Empire.

46. It is this enormous disadvantage, and not the competition of publishers in the United States, that Canada complains of and it cannot correctly be alleged that the Canadian publishers "are undersold by competitors who have the advantage of larger capital and a larger market."

47. The Committee have devoted a considerable portion of their report to a statement of the objections to the confirmation of the Canadian Act of 1889. The undersigned forbears, at the present time, from entering into a discussion of the legal views on which the necessity for an Imperial statute to confirm the Canadian Act depends. They have been fully set out in a report which he made in August, 1889. To the arguments therein stated he still adheres, but when it was made apparent, in the reply which was received to that report, that the Colonial office had adopted a different opinion and held that an Imperial statute was necessary, the attention of the Canadian government and parliament were immediately applied to the task of showing Her Majesty's government that, for every reason which could be drawn from the assurances of the past, such an enactment should be speedily given. It was this branch of the subject that the undersigned had the honour to present, in his letter of the 14th July, 1890, written at Lord Knutsford's suggestion, and it is to this branch of the case that the present observations are intended principally to be applied.

48. It is proposed, therefore, to consider the various objections which are stated by the committee in their report.

The first objection is this: "It would involve abandonment of the policy of international and Imperial copyright which Her Majesty's government adopted and to which Canada assented only six years ago."

49. It is denied that the provisions of the Canadian Act would involve the abandonment of that policy, even in so far as Canada is concerned, because the copyright holder

would still be compensated by the royalty instead of the customs duty. As regards the assent of Canada of six years ago to the Berne Convention, Canada's right to withdraw from the convention on a year's notice was placed on the face of the treaty and she would not have consented to enter without that condition. The right has never been questioned and a request that Her Majesty's government should give notice of Canada's withdrawal has been most distinctly and emphatically made. With a knowledge of these facts, the committee's report in paragraph 50, uses these words: "If Canada presses for withdrawal from the Berne Convention her request cannot well be refused."

50. The undersigned ventures to express the hope that no doubt will be entertained on this point. By an Order in Council, Canada, years ago, asked for the notice to be given. By an address of both houses of parliament she repeated that request in the most formal manner to Her Majesty. By a despatch of recent date your Excellency's government urged that the notice be given without any further delay; and, in case there should be any uncertainty on the subject, it is now asserted that "Canada presses for withdrawal from the Berne Convention."

51. The next objection stated is that "It would be at least open to the charge of being inconsistent with the declaration as to the law of the United Kingdom and the British possessions which was made to the United States by Lord Salisbury, on the faith of which the United States admitted British authors to the benefit of their copyright law." This seems so fallacious as to call for no further comment than has been made upon it in an earlier portion of this report. It is impossible, in the view of the undersigned, that Lord Salisbury's statement of the law should be construed as a promise for all time, or for any time. But if, by this statement, it is intended to be inferred that the United States will hold at such high value the market of Canada, which they are now able to control, as to refuse copyright to British authors if that market be not continued to them, the demand for redress on the part of Canada will be more emphatic than ever, because the inquiry will arise whether it is proposed to place an important commercial interest of Canada at the disposal of a privileged class in Great Britain to be bartered for privileges to that class in a foreign country. It will be necessary to consider at once how long the market of Canada is to be thus controlled, and whether it is to be finally settled that Canada is to be placed at a disadvantage as compared with other countries in her neighbourhood because her people have retained connection with the Empire, which they have so long done from very different motives than those of self interest.

52. The next objection is that the confirmation of the Canadian Act "would be inconsistent with the policy of making copyright independent of the place of printing" —a policy— which Her Majesty's government have for many years been urging the United States to adopt."

53. It is well known that the United States have never shown a disposition to adopt any such policy. It is difficult to suppose that any well-informed person entertains any expectation that they will do so. Her Majesty's government evidently had no such view when, by Lord Salisbury's "arrangement" with Mr. Lincoln, they conceded to United States citizens copyright privileges throughout the British Empire, without that policy being adopted on the part of the United States, but when, on the contrary, the United States emphatically refused to adopt it. After that arrangement, it is difficult to understand what reason could be suggested to Congress for abrogating a condition (printing in that country) which protects the labour of the United States, to the manifest disadvantage of British labour of the same kind, and yet results in no denial to United States citizens of the privileges which British subjects have. Surely it would not now be urged that Canada should any longer have the granting of her request postponed for the imaginary reason that some better arrangement may be made with the United States, of which there is not the slightest probability, and which would be of very doubtful value, even if obtained, as far as Canada is concerned.

54. A further objection alleged against the Canadian Act of 1889 is that "it would impair the right in Canada, of British authors," (meaning, of course, British copyright holders), "by whom the Canadian market is principally supplied."



55. This is a statement of the most doubtful accuracy. The Canadian Act would secure to British copyright holders revenues which would be a hundred-fold that now received from Canada, by reason of the collection of the stamp duties on Canadian reprints being substituted for customs collection on foreign reprints. If the British author would sell his copyright in Canada (which he rarely does now, because the purchaser in the United States demands of him that Canada shall be thrown into the bargain) he would find the product of his copyright greatly enhanced under the Act of 1889. It is doubtful, at the present time, whether the United States purchaser pays anything additional to the British author in consideration of the market of Canada, but, certainly, if the market of Canada were purchased by those understanding the trade of this country, the price which the author would receive for the Canadian market would be greater than it now is. If the holder of copyright did not sell the Canadian market he would receive the price from the United States purchaser plus the additional revenue collected under the license in Canada.

56. One widely-read author is known to have sold his right to a great publishing house in the United States. He refused to sell, at that time, the Canadian market to a Canadian purchaser. That condition was exacted of him by the publishing house in the United States which became his purchaser. Subsequently an arrangement was made with the author by a Canadian publisher, by which the latter secured the Canadian market by paying a larger sum for the Canadian right than the United States publishing house had paid for the same privilege in the United States and Canada together.

57. In any event Her Majesty's government should be asked to consider whether the rights of British copyright holders, created under the statute of 1842, are to continue to be set up as a bar to the rights of the Canadian parliament and Canadian people, after so repeated a recognition of the fact that the creation of these privileges had become a grievance in Canada, and so long after promises and assurances had been given that that grievance would be redressed. If so, it is exceedingly difficult to understand many of the expressions which have been continually made use of in Imperial despatches for the last fifty years.

58. The report of the committee goes on to state an opinion that "It is doubtful whether the Canadian reader has, under existing circumstances, any ground of complaint at all." That opinion the undersigned cannot concur in. Even when foreign reprints were abundantly produced, that is to say before the passage of the American copyright law, the Canadian reader was obliged to pay a tax for the benefit of the copyright holder which was collected by the customs officers in Canada. That tax was not very burdensome, because the reprints were published at a very low price and the duty was an *ad valorem* impost on the wholesale importation. The Canadian reader is not now in so good a position, because of the generosity of Her Majesty's government towards the United States citizens which has given the citizens of that country a monopoly of the Canadian market not only for reprints of the British works which they continually acquire the copyright of, and which the Canadian publisher cannot acquire, but for all United States publications as well. The result of this is that new books have doubled in price in Canada within the last three or four years, and there is a prospect of further advance.

59. The report of the committee goes on to say that "It is the British author and publisher who have a right to complain of the Foreign Reprints Act." On behalf of Canada it is denied that the British author and publisher have reason to complain because they are not permitted, besides locking the Canadian press, to banish British literature from Canada by seizing it in the customs-houses, unless it shall come in the form of a British edition which could not be sold in Canada, save in very small numbers. The British author would have no right to complain of the Canadian Act of 1889, for, as has been shown, his position would be materially improved thereby.

60. The committee go on to state that the reality of the grievances of the British author and publisher "was admitted by the Copyright Commission of 1876." The reality of those grievances is not admitted in Canada, but if such grievances ever really existed they are less now, because the effect of the legislation of the United States is to curtail very largely the publication of foreign reprints, and they would be less still under the

Canadian Act of 1889, because the trade in foreign reprints would be almost, if not quite, abolished.

61. It is difficult to understand why this suggestion is made, with regard to the Foreign Reprints Act, unless it were intended as a suggestion in favour of greater restrictions as to copyright than those existing at present, by the repeal of the Foreign Reprints Act. If that were the object of the suggestion, it hardly calls for any remark, in view of the past history of this subject, and in view of the fact that the collection of customs duties in favour of British copyright holders is a matter of increasing inconvenience in Canada and must eventually be abandoned, for reasons which it is not now necessary to state at large.

62. Another suggestion in the report under review is that "Deprivation of Canadian copyright might be seriously detrimental to the interests of Australian authors, say, for instance, of a Melbourne novelist whose works are likely to obtain extensive circulation in Canada." The case is not a very probable one. In the words of the committee, applied to Canadian authors, it may be, "treated as belonging rather to the future than to the present." It seems sufficient to say, for the present, that Australians are, and doubtless always will be, placed on the same footing as other British subjects in all Canadian legislation, but that, if it should become, at any time, a question what rights should be enjoyed in Canada by any class of Australians, it surely cannot be contended that that question should be decided by the parliament of the United Kingdom or by the parliament of Australia, rather than by the parliament of Canada.

63. The report under review devotes a paragraph to the interests of the Canadian author of whom it is said that under the Canadian Act of 1889, he would be deprived of copyright in every country outside of Canada. This would be by no means the case unless Imperial legislation were adopted to withdraw from Canadians not only the rights within the Empire, conceded to all British subjects, but the rights conceded to the people of most foreign countries, under the Berne Convention, which seems a suggestion quite unworthy of a place in this controversy.

64. The Canadian parliament has not overlooked the interests of its authors or of any other class. When it speaks, as it has done on the subject, it speaks after full consideration of all the interests involved, and which it is well able to weigh.

65. The report under review proceeds to discuss at some length the question whether indeed the Canadian publishers have any grievance, and whether such grievance has been enhanced by the Berne Convention. If the committee had obtained information upon this subject in Canada, where alone the facts are to be found, they could hardly have arrived at the conclusion which they state. The Canadian publisher has never had an opportunity of competing with his rivals in the United States, except in rare cases, as where a Canadian has bought copyright from United States publishers to whom the markets of Canada had been sold by the British copyright holder, and sometimes directly from a British copyright holder.

66. The effects of the Berne Convention have already been discussed, but the committee could have found abundant evidence in Canada that the grievance of the Canadian publisher has been greatly augmented by every change in the copyright law of the United Kingdom, in recent years. His condition has been made distinctly worse by the Berne Convention and the grievance has been greatly enhanced by the concessions made by Her Majesty's government to the United States, under the "arrangement" for which this government was for many years asked to wait as a measure which would give the relief desired.

67. The report suggests, as has already been remarked, that "the real grievance of the Canadian publishers is that they are undersold by competitors who have the advantage of larger capital and a larger market and in whose favour protective legislation is enforced, against their weaker rivals." In considering this view of the case, too much stress ought not to be laid on the weakness of the Canadian publisher. The fact is that he has not been allowed to compete with his United States rival.

68. In exceptional cases, where a Canadian publisher has secured a right to his own market, it has been found that books have been produced in Canada at lower rates than in the United States. Numerous instances can be cited of books which were printed in

the United States and reprinted in Canada to prove that these books have been sold in Canada at a price eighty per cent below the price of the United States edition. The real grievance of the Canadian publisher, the Canadian type-setter and every other Canadian workman engaged in the production of books, as already stated, is that he is not allowed to compete with his United States rivals, by reason of his being a British subject and, therefore bound by the copyright legislation of the United Kingdom. It is true, as stated by the committee, that the United States competitor has a larger market, because the United States publisher of books controls the market of the United States *plus* the market of Canada ; while the Canadian producer has not even the market of Canada, except in the rare cases before referred to, and then he can supply only Canada, being debarred from the United States markets because his book is not printed in the United States.

69. It is also true that the Canadian publisher is handicapped by the protective legislation of the United States, in favour of the publishing interest of that country, and especially by the obligation on the applicant for copyright to print from type set in the United States, while the citizens of the country imposing that condition are allowed all the advantages of British subjects, and Canadians are denied the right to impose any such conditions as to Canada.

70. The report under review again makes this statement with regard to the Canadian publishing interest, evidently from erroneous information : "What the Canadian publisher and printer want is to keep out books, cheap or otherwise, not printed or published at their own establishments." As a matter of fact, what the Canadian publisher and printer desire to do is to supply the cheap books which the Canadian reader desires. Under the Canadian Act of 1889, a publisher could have no monopoly in republishing copyright books, because the government would have the right to grant any number of licenses to reprint. Furthermore, the British publisher would still have the opportunity to send his books from Great Britain to Canada.

71. It must, therefore, be repeated that it is desired that the Canadian publisher, be permitted to sell in his own market ; a market which, under present conditions, is reserved for the benefit of persons outside of Canada.

72. The Committee has suggested that "The simplest and most effectual mode of lessening the price of Canadian books would be to remove or reduce the Canadian import duty of fifteen per cent on books."

73. The undersigned cannot agree with this view. The experience of the past has proved that the simplest and most effectual mode of lowering the price of Canadian books would be to have the Canadian press unlocked and the Canadian publisher and printer permitted to produce books.

74. The removal of the Canadian import duty would undoubtedly be an additional boon to the publishers and printers of the United States, but the undersigned ventures to think that the interests of that class have been already sufficiently cared for and do not require additional advantages from the government of Canada.

75. The argument in favour of reducing the Canadian import duty in order to cheapen books is somewhat in contrast with another statement in the report under review, viz., the declaration that the royalty to copyright holders proposed by the Act of 1889 should be greatly increased and that more stringent methods of taxation should be adopted in order to secure the collection of the tax.

76. In paragraph 56, the committee suggests that "the amount of royalty might perhaps be fixed at fifteen per cent, so as to correspond with the amount of the existing import duty on books, and that the royalty might be levied by means of a stamp on each copy, so that if unstamped books were offered for sale they should be liable to seizure."

77. It seems to be implied from this that the import duty and the tax in favour of the copyright holder should be equal and it would then follow that a reduction of the import duty, as advised by the committee, would at any time be accompanied by a reduction of the copyright holder's royalty.

78. The intimation, contained in paragraph 57 of the committee's report, that such Canadian legislation as is required should be confined to books, is not acquiesced in by



the undersigned. It is true, as stated in the report of the committee, that copyright in musical, dramatic, and artistic works raises a very difficult question, but the right of the Canadian parliament to receive the power of self-government with respect to those matters is surely as plain as it is in relation to books. The demand to have that right conceded is surely not too difficult to be understood by statesmen of a country which has granted that right freely, in relation to all other commodities.

79. The committee in their report under review, have stated various objections to the details of the Canadian Act of 1889. These objections, in the view of the undersigned, are not maintainable. They say: "That twelve months might be allowed as a reasonable time" (to the copyright holder) "for cheap reproduction, and during that time the Imperial copyright should remain unimpaired." In reply to this it must be said that in less than twelve months the Canadian market would be flooded with American reprints and the sale of the book would be over. The report then says that "the royalty might perhaps be 15 per cent so as to correspond with the amount of the existing import duty on books." In the view of the undersigned, the Canadian proposition of 10 per cent royalty on each copy would yield much larger returns than the one proposed, which would be 15 per cent *ad valorem* on the quantity imported, wholesale rates. Such is obviously the meaning of the proposition of the committee as is seen by reference to the import duty which is an *ad valorem* duty on the wholesale rates.

80. The 10 per cent royalty proposed by the Canadian Parliament would be imposed on the retail price of each book and would take the place of the 12½ per cent now collected by customs on wholesale rates, *ad valorem*, for the benefit of the copyright holder. An example may be taken to illustrate. A book issued last year cost, when imported from the United States, \$22 for 100 copies. The duty at 12½ per cent was \$2.75. The retail price of the book being 50 cents the royalty therefrom at 10 per cent (as it would be if the book were republished in Canada), would be \$5. Thus securing a gain to the copyright holder of nearly 100 per cent.

81. The undersigned, however, does not deem this a proper place to discuss the details of the Canadian Act; as he does not deem it the proper place to discuss the legal rights of the Canadian parliament to pass that Act. What the Canadian parliament and government desire, is that the right of the parliament of Canada to legislate on this subject shall be relieved of all doubt; and there would still be left to Her Majesty's government the same constitutional right which it has with regard to all legislation in Canada, and which, it is submitted, is sufficient to secure every reasonable requirement for the security of imperial interests.

82. The undersigned stated in his letter to Lord Knutsford in 1890, that a most respectful consideration would be given to any suggestions for the improvement of the Canadian Act of 1889 which his lordship might think proper to make, after hearing all that might be advanced on both sides. It would seem only reasonable, at the present time, however, that after all that has taken place some steps in advance should be taken towards removing Canadian grievances beyond the mere routine of inquiries, reports, and suggestions. It was hoped that that state had been reached when the report of the Royal Commission of 1876 was made especially in view of the fact that the report of that commission was so favourable to Canadian claims.

Respectfully submitted.

JNO. S. D. THOMPSON,  
*Minister of Justice.*

*The Marquess of Ripon to His Excellency the Governor General.*

DOWING STREET, 15th March, 1895.

MY LORD,—You are aware that one of the questions which the late Sir John Thompson proposed to discuss with Her Majesty's government during his visit to this country was that of the Canadian Copyright Act, which has already formed the subject of considerable correspondence.

It has been the cause of deep regret to Her Majesty's government that, owing to his premature death, the personal discussion from which they had hoped that a satisfactory solution of this vexed question might result, did not take place.

The grave objections to some of the provisions of the Canadian Act in its present form, and the international difficulties and complications to which it would give rise if it were allowed to come into operation, have been fully dealt with in previous communications, and the correspondence which has taken place has failed so far to bring about even an approximation of view between Her Majesty's government and your ministers.

In these circumstances I am reluctant to continue a controversial correspondence from which no result seems likely to be gained, and the only course which appears to me to offer any prospect of a solution, is that, as soon as convenient, one of your ministers, or some gentleman duly authorized by them and fully conversant with the subject, should come over and discuss the matter personally with Her Majesty's government.

The interests in this country affected by the measure are extensive and powerful, and the persons concerned have become seriously alarmed, whilst those in Canada whose interests are at stake may naturally be becoming impatient at the delay which has taken place; and I trust, therefore, that your lordship will press the suggestion of a personal conference on your ministers as preferable to a further interchange of despatches.

I have, &c.,

RIPON.

*His Excellency the Governor General to the Marquess of Ripon.*

GOVERNMENT, HOUSE, OTTAWA, 5th June, 1895.

MY LORD,

I have the honour to inclose herewith copy of an approved Minute of the Privy Council from which your lordship will learn that, in accordance with the suggestion contained in your lordship's despatch of the 15th March last, ministers have authorized Mr. E. L. Newcombe, Q.C., Deputy Minister of Justice, to proceed to London to discuss the copyright question with Her Majesty's government.

I have, &c.

ABERDEEN.

*Extract from a report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 30th May, 1895.*

The committee of the Privy Council have had under consideration a despatch, hereto attached, dated the 15th of March, 1895, from the Marquess of Ripon, with regard to the Canadian Copyright Act, which Act, and the correspondence relating thereto, the late Sir John Thompson proposed to discuss with Her Majesty's government during his last visit to England.

The Ministers of Justice and of Agriculture, to whom the said despatch was referred, observe that Lord Ripon states that previous communications and correspondence have failed so far to bring about even an approximation of view between Her Majesty's government and the government of Canada; that no result appears likely to be gained by further controversial correspondence, and that the only course which seems to offer any prospect of solution is, that, as soon as convenient, one of your Excellency's ministers, or some other gentleman duly authorized by them, and thoroughly conversant with the subject, should proceed to London and discuss the matter personally with Her Majesty's government.

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The ministers, in these circumstances, and considering the important interests which are at stake in Canada, and which have been and are suffering by the delay which has already been incurred in arriving at a conclusion of this question, approve of the course suggested; and, inasmuch as it would be impracticable, owing to the present sitting of parliament and other considerations, for one of your Excellency's ministers, to undertake the proposed conference at present, they (the Ministers of Justice and Agriculture) recommend that Mr. Edmund L. Newcombe, Q.C., the Deputy Minister of Justice, be authorized to proceed to London and confer with the representative of Her Majesty's government upon the subject.

The committee submit the foregoing for your Excellency's approval, and they advise that your Excellency be moved to forward a certified copy of this minute to the Right Honourable Her Majesty's Principal Secretary of State for the Colonies.

JOHN J. MCGEE,  
*Clerk of the Privy Council.*

See also return of correspondence on subject of Law of Copyright in Canada (1889-1895). Presented to Houses of Parliament (Imperial) June 27, 1895, No. C. 7783



## APPENDIX B.

ACT RESPECTING THE SPEAKER OF THE SENATE.—57-58 VICT., CHAPTER 11.

57-58 VICTORIA (1894).

*Chapter 11.—“An Act respecting the Speaker of the Senate.”**Report of the Committee of the Hon. the Privy Council, approved by His Excellency the Governor General on the 25th August, 1894.*

The committee of the Privy Council have had under consideration a report of the Minister of Justice upon a statute passed at the last session of parliament 57-58 Victoria, chap. 11, intituled “An Act respecting the Speaker of the Senate.”

The minister states that the Act was introduced on account of inconvenience experienced occasionally by the Senate, during the temporary absence of the Speaker from personal indisposition or illness of members of his family. It has been assumed that his place could not be supplied temporarily by the Senate, and the Senate had no power to make a rule on the subject. Doubts have also been expressed as to the power of the Canadian parliament to make provision to meet such a case, as for instance, by providing for a temporary chairman.

The minister further states that, under the circumstances, parliament concluded to pass an Act with a suspending clause, and he (the minister) deems it his duty to make the enactment the subject of a special report to your Excellency, in order that the question as to the power of the Canadian parliament to pass such a statute may be brought to the notice of the Most Honourable the Secretary of State for the Colonies, with a request that the matter may be laid before the law officers of the Crown for their opinion as to the powers of the parliament of Canada in this regard.

The minister also states that it has been contended in support of the bill that the power to pass such a statute lies within the unenumerated powers of parliament. See section 91 of “The British North America Act, 1867” which begins as follows:—“It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces.”

It has also been urged that the matter is a mere regulation of order with regard to the procedure of the Senate, that it does not affect the constitution of parliament and that the Senate has, by implication, authority to pass a rule upon this subject and that *a fortiori*, the parliament of Canada has that power.

The competency of the parliament of Canada in this regard has been elaborately controverted in a memorandum prepared by Dr. Bourinot, the Clerk of the House of Commons, a copy of which is attached hereto, entitled “Memorandum on the Constitutional Power of the Canadian Parliament to provide for the appointment of a Deputy Speaker of the Senate.”

The committee, on the recommendation of the Minister of Justice advise, that your Excellency be moved to forward a copy of this minute, if approved, to the Most Honourable the Secretary of State for the Colonies, with the request that if the statute be deemed to be within the competence of the parliament, Her Majesty's pleasure may be signified in the way indicated in section 4, and that if the enactment be deemed to be beyond the competence of parliament, or to be of doubtful validity, the parliament of the United Kingdom may be moved to pass a statute enabling this Act to be brought into operation.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,  
*Clerk of the Privy Council.*

MEMORANDUM OF THE CONSTITUTIONAL POWER OF THE CANADIAN PARLIAMENT  
TO PROVIDE FOR THE APPOINTMENT OF A DEPUTY SPEAKER OF THE SENATE.

By the thirty-fourth section of the British North America Act of 1867, it is enacted :

"The Governor General may, from time to time, by instrument under the Great Seal of Canada appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead."

31 Vic., c. 3,  
s. 34.

It is now proposed to give the power, by an Act of the parliament of Canada, to the Senate to "choose" \* a Senator to act, in the absence from the chair of the Speaker, duly appointed in accordance with the foregoing provision of the fundamental law.

The question is now raised ; Has the parliament of Canada the constitutional power to change, as stated above, the constitutional provisions respecting the office of Speaker of the Senate, in the absence of any express statutory authority in the British North America Act or other Act of the parliament of Great Britain by whom the fundamental law has been enacted, and by whom alone it can be repealed or amended in any particular not already provided for in the Act itself.

The following considerations are submitted to show the doubts that exist in the minds of the present writer, and of many others, with respect to the constitutionality of the proposed legislation.

See Can. Com.  
Debs., 1893.  
March 30 and  
April 1. Sen.  
Deb., 1893.  
March 16, 17,  
20, 21 and 22.

The parliament of Canada is a legislative but not a "constituent" body, having inherent power, like the parliament of Great Britain, to alter its own constitution. It has no power in this respect, except in those few cases where such power is expressly given in the British North America Act. These cases are the election of members of the House of Commons (ss. 40, 41), provision in case of the absence of the Speaker of the House of Commons (s. 47) and the regulation of the quorum of the Senate (s. 35). With respect to the speakership of the Senate there is no provision in the Act except that already cited ; the power granted to the parliament of Canada with respect to the speakership of the Commons is not given with regard to the speakership of the Upper House. In this connection it is not unimportant to note that in the original Quebec resolutions which led to the British North America Act of 1867, a provision was actually made for the amendment, if necessary by the parliament of Canada, of matters relating to the office of Speaker ; but the words "until the parliament of Canada otherwise provides" were left out of the Act in the case of the Senate speakership though they were continued in the case of the Commons, and even with respect to the Senate quorum. This omission can hardly fail to have some significance in the consideration of the argument on this question.

See Can. Leg.  
As. J., 1865,  
p. 68, sec. 15.

To exercise its constitutional power under the law the Senate must be constituted with a fixed quorum, and a speaker in the chair appointed in accordance with the fundamental law as already stated. The Senate is a legislative body simply, acting within the limitations of the British North America Act, and has none of the constitutional and legal functions of the House of Lords which forms part of a constituent body, having unquestioned authority to alter the constitution of parliament and of the realm in any particular. The fact that the House of Lords has deputy speakers does not give the Senate any authority to follow their procedure. The

B.N.A. of  
1867, s. 35.

\* In the Bill as originally introduced in 1893 the word "to appoint" was used ; but now, by a process of reasoning not altogether intelligible, it is thought that the constitutional difficulty is in a measure lessened by giving the Senate the power "to choose," or elect a deputy speaker. It looks like an *evasion* of the difficulty raised by the express terms of sec. 34 above.

(See Sen. Deb., 18th April, 1894.)

House of Lords has inherent and prescriptive rights derived from the ancient constitution of parliament, and none of which can belong, in the absence of express grant, to a body like the Senate, which is the creation of an Imperial statute and has no other powers than those given it in express terms or by necessary implication in that statute.

If we suppose the Senate, discharging its legislative functions, with a Senator in the chair, for whose appointment the constitution enacts no express provision, we may fairly argue that that branch of the legislature is illegally constituted, and that its legislative acts under such circumstances are liable at any moment to be called into question in the courts. If this opinion be correct, and it is certainly sustained by cogent argument, then it is evident that a question seemingly unimportant in its primary aspect becomes in its consequences one of much gravity, and we see the necessity of proceeding with great caution in a matter clearly involving a change in the fundamental law.

The powers of the Canadian parliament are defined, enumerated, limited and restrained by the British North America Act. Where power is not expressly conferred by that Act, the exercise of it is presumably prohibited. While admitting the soundness of this well recognized principle, the advocates of the proposed legislation take their stand on certain sections of the British North America Act. The variance of opinion as to where the power actually rests among the supporters of the bill is noteworthy, some contend that the necessary power is contained in the eighteenth section of the Act; others argue from the ninety-first section, and a very few base an argument on the general doctrine of "implied powers." It is consequently necessary to refer to these several opinions in due order. Section 18 enacts as follows:

See 38-39 Vic.  
c. 38, Imp.  
Stat.

"The privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the members thereof, respectively, shall be such as are from time to time defined by Act of the parliament of Canada, but so that any Act of the parliament of Canada defining such privileges, immunities and powers shall not confer any privileges, immunities or powers exceeding those at the passing of such Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.

Under this statutory authority can the parliament of Canada invest the Senate with authority to elect or otherwise provide for the appointment of a Deputy-Speaker? What are the "powers" possessed by the English House of Commons? The "privileges, immunities and powers" in question are certainly not those possessed by the English House of Commons as a part of a constituent and sovereign body which may alter its own constitution in any respect. It was never contemplated under this section, to give the parliament of Canada the power of altering the constitution of the Senate in any particular, as respects the number or qualifications of members, or the office of Speaker, for instance. It is clear that the meaning of the word "powers" is here restricted by the words "privileges" and "immunities," that the words are *ejusdem generis*, and that the "privileges, immunities and powers" mentioned in the original 18th section, and the amendment thereof just quoted, refer to the privileges of freedom of speech, freedom from arrest on civil process during the session, the power of protecting witnesses, the power of expelling and suspending members, the power of commitment and punishment for contempt, the power of making inquiries and examining witnesses under oath or otherwise, and such other "privileges, powers and immunities" as are exclusively enjoyed by one branch of the legislature as inherent powers and privileges. It is also important to note that in electing a Deputy-Speaker the House of Commons of England



found it necessary in the first instance to obtain the authority of a statute to give validity to acts done in the absence of the Speaker, inasmuch as the House doubted its competency to make the appointments on mere resolutions or standing orders of its own. It enjoys its powers in this respect by virtue of a law passed by the parliament of Great Britain which is a constituent body.

It seems impossible to understand on what principle of sound construction this general statutory authority—the 18th section—can be so extended as to include the power of changing that part of the written constitution which expressly provides a definite mode of appointing a Speaker of the Senate. No power can be conferred on the Senate in direct conflict with an express provision of the law.

We come next to consider the general power granted in the introductory part of section 91 to the parliament of Canada “to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces.”

In the foregoing and the following (92nd) section we have an enumeration of the respective legislative powers of the parliament of Canada, and of the legislatures of the provinces, with the residuum of power expressly given to the former legislative authority. These two sections embody the distribution of legislative powers, as distinct from the previous parts of the Act setting forth the constitutions of the Senate, of the House of Commons, and of the provinces—of the machinery and procedure, in short, for carrying out the legislative powers as enumerated in the 91st, 92nd, and other sections of the Act. It would seem to be an extraordinary stretch of construction to argue that the first part of the 91st clause could be so construed as to contain inferentially a power to alter the machinery of the legislative authority, as previously enacted; and that too in the absence of any provision giving such power in express terms or by necessary implication in the latter clauses of the 91st section. This opinion gains additional strength from the fact that the 92nd section does in express terms give power to the provincial legislatures to amend their own constitutions except with respect to the office of Lieutenant-Governor. The inference is obvious, that if it were intended to give a power to the general parliament it would have been so expressly enacted in the 91st section.

The weakness of the argument derived from the general terms of the introductory part of the 91st section, as cited above, can be understood from the fact that, when in 1873 the question of the power of the Senate and the House of Commons of Canada to administer oaths to witnesses before committees and at the bar, was under discussion, it was argued by high constitutional authority that the general power contained in the 91st section “to make laws for the peace, order and good government of Canada” included the power in question; but the eminent law officers of the Crown in England gave no weight whatever to that argument—indeed they do not refer to it at all—and as a result of their opinion an Act of the Imperial parliament was subsequently passed to amend section 18 of the British North America Act of 1867 as it is cited above, and to make valid previous legislation of the parliament of Canada on the subject of oaths to witnesses. It is difficult to understand how any other conclusion can be reached in the present case than that an Imperial amendment is also necessary when it is proposed to change a provision of the Constitution of 1867 enacted in express terms by the authority of the Imperial parliament.

It is also an argument in the same direction that were the general words of the 91st section open to the very wide construction that some give it, then it would have been quite unnecessary to give power in express terms

Dr. Alpheus Todd, see Can. Com. J., 1873 sess., pp. 9, 10 encl. in Lord Dufferin's des. No. 116, May 30, '73.

See Can. Com. J., sess. of 1873, pp. 8-11; Bourinot's Parl. Procedure, pp. 525-529.

38-39 Vic. c. 38, Imp. Stat. of 1873.

to the parliament of Canada to change the election laws, to make provision for the absence of the Speaker of the House of Commons, and to alter the quorum of the Senate. If the argument is good in the case of the speakership of the Senate, it is equally valid in other cases where amendment of the constitution might be considered necessary with a view to "peace, order, and good government."

The writer does not attach much importance to the doctrine of "implied powers," and indeed it is hardly mentioned by the Speakers in the debates that have already taken place on the question. Looking into the principles that generally govern the application of this doctrine, which has had such important results in the construction of the constitution of the United States, especially as laid down by Marshall, Story and Cooley, I understand that they must be construed in the present case as the power of doing simply such acts and employing such means as are necessary to the exercise or enjoyment of the office of Speaker, appointed and acting in accordance with statute. The "implied powers" are those essential to the discharge of the duties of the office, carrying out the rules and usages of parliament, and the assertion and execution of the "powers, privileges and immunities" of the House under the law. The appointment of a Deputy Speaker is not in any way absolutely essential to the due performance of the office. In all cases "the implication must be necessary, and not conjectural or argumentative." It must arise naturally from a general power, and not be strained to apply to a specific provision. "Where the means for the exercise of a granted power are granted, no other or different means can be applied as being more effectual and convenient." The courts of the United States have in numerous cases prohibited legislative interference intended to add to the conditions or circumstances under which a constitutional right is exercised. I have already shown what has been the result of the controversy that arose in 1873, when it was practically urged that the parliament of Canada had implied power under the 91st section to administer oaths to witnesses.

See Cooley's  
"Constitutional Limitations," pp. 78,  
79, 6th ed.

See Cooley as  
supra.

The British North America Act does not recognize the doctrine of implied powers in cases analogous to the one under consideration. The Act makes express provision for the absence of the Speaker of the Commons, for the appointment of a deputy or deputies of the Governor General, and for the appointment of an administrator in the event of the absence, illness or inability of a Lieutenant-Governor. It may be fairly argued that the framers of the Act advisedly made a distinct exception in the case of the speakership of the Senate. It is noteworthy that in all cases, where it is necessary to provide for the appointment of a deputy to act under certain circumstances for the principal, power is so given in the commission, letters patent, or act constituting or regulating the office. We see this in the cases just cited, and even in the municipal system of Ontario and other provinces a similar provision is made for the absence of the head of a council. It is also worthy of note in this connection that in the constitution of the United States an express provision was considered necessary for the appointment of a Senator to act in the absence of the legally appointed President of that body, who is also Vice-President of the United States. No dependence was placed on the doctrine of the implied powers of a representative or legislative body in such a case. In a written constitution too much care cannot be taken to make the machinery of legislation complete.

U.S. Const.,  
Art. I, s. 3.

See supra, p. 1.

Another important consideration which must weigh in coming to a conclusion on the subject is the fact that the Governor General representing the Crown has, under the Imperial statute or fundamental law of Canada, the sole right, if language means anything, to appoint by instrument under the Great Seal, the Speaker of the Senate, as well as to remove him at pleasure. No such rights, equivalent in their nature to the prerogative

rights of the Crown, can be taken away by mere implication. Such prerogatives can only be changed, modified or taken away with the express consent of the Crown or Governor General. It is difficult, if not impossible to understand on what principle of sound legislation any authority exists in the parliament of Canada to vest in the Senate the right to appoint a deputy of an officer, whose appointment is declared in express terms by an Imperial statute to be vested in the Governor General alone. It seems to be a direct interference with a prerogative of the Governor General who, then acting in his official capacity, represents the Queen. If there is believed to be an implied power anywhere to appoint a deputy it would be in the Governor General himself, and not in the Senate whose powers are limited by Imperial statutory authority. If it is permissible for the parliament of Canada to diminish or take away from the prerogative right of the Governor General over the appointment of the Speaker of the Senate, and to allow the Senate, without any express legal or necessarily implied authority, to appoint a deputy to act for any length of time in the absence or inability of the Speaker, then you might go further and declare that the Governor General shall not appoint the Speaker at all. If you can say that a particular person can act as Speaker for an hour or a day, you can invest him with authority to act for the whole session, and practically nullify the provision of the Act providing in a particular way for the appointment of a Speaker. That would be the consequence of admitting that the 91st section gives implied power to alter the provision in question and constitute the Senate, not with a Speaker as provided for expressly in the statute, but with another person not mentioned or contemplated in the fundamental law. Admit such a principle of amendment, and the logical sequence is the amendment of the constitution in many other essential respects.

One student of our constitution, in the debate on the subject, did not argue in favour of the constitutionality of the Senate Bill on the same grounds as other advocates of the proposed amendments—viz.: the 18th and 91st sections as above set forth—but laid much stress on the following clause of the Colonial Laws Validity Act (28-29 Vic., c. 63, Imp. Stat. of 1865) which he considered applicable to the case in question.

Dr. Weldon,  
M.P., Can.  
Com. J. Deb.,  
1893, March  
30.

“ 5. Every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction, to establish courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required, by any Act of parliament, letters patent, Order in Council, or colonial law for the time being in force in the colony.”

If it could be admitted that by virtue of this clause “ the constitution, powers and procedure ” of the Canadian system of government, as set forth in the British North America Act of 1867, could be subject to amendment in any particular, then it would not be the fundamental law it was intended and has always been believed to be. As a matter of fact, by necessary implication, the clause in question is repealed by the British North America Act, passed two years later, which has special and complete provisions relating to the constitution of the courts of judicature, and the administration of justice in the Dominion. The British North America Act is intended to be complete within itself—*totus, teres, atque rotundus*—and it is impossible, in the writer's opinion, to believe that it can be amended by the Act in question, whose express provision is made for the machinery, constitution and legislative powers of the Dominion and legislatures. Admit an-



other principle, and there would be no security for the different members of the confederation, who have entered into a federal compact on the clear and express understanding that the constitution cannot be altered or amended, except where it is expressly provided for in the Act itself, or on the special address of the legislative bodies to the Imperial parliament as cases may arise. The Act in question was confessedly intended to meet difficulties that arose in the Australian colonies; the preamble expressly sets forth that "doubts have been entertained respecting the validity of certain laws enacted or purporting to be enacted by the legislatures of certain of Her Majesty's colonies, and respecting the powers of such legislatures, and it is expedient that such doubts should be removed." The very words of the fifth clause cannot be construed so as to include within the meaning of a "colonial" or "representative legislature," the parliament of the Dominion of Canada, which is a federal aggregation of several colonies with colonial legislatures, whose respective constitutional rights are defined and enumerated within the four corners of the Act constituting the Dominion.

See definitions  
in sec. 1 of Act.

38-39 Vic., c.  
38, Imp. Stat.  
of 1875.

The general statute—the Colonial Laws Validity Act—must then be read as silently excluding from its operation any cases that have been provided for by the later special Act relating to the constitution of the Dominion. But if there were any doubts on this question they are disposed of by the fact that the Imperial parliament considered it necessary to give, by an Act of their own, new powers to the Dominion parliament, and to validate its legislation with respect to the examination of witnesses in certain cases under oath. If the fifth clause of the Colonial Laws Validity Act had any direct application to the parliament of the Dominion of Canada then it would not have been necessary to pass the Imperial Act of 1875 with respect to a matter immediately affecting the procedure of parliament.

The same argument applies to a later Act, 49-50 Vic., c. 35, Imp. Stat.: "An Act respecting the representation in the parliament of Canada of territories which for the time being form part of the Dominion of Canada, but are not included in any province."

It is also important to consider in this connection that, when the law officers of the Crown in 1873 had under review the Oaths' Act, they had actually in their mind this Colonial Laws Validity Act, but they did not give any weight whatever—in fact they do not refer at all—to the third clause which, it is now contended, gives authority to the Canadian parliament to alter "its constitution, powers and procedure." While ignoring this clause, obviously for the reason that it is not applicable to Canada "by express words or necessary intendment," they gave the importance that is due to the second clause—the only one applicable to the Dominion—which enacts that "any colonial law, which is or shall be repugnant to the provisions of any Act of parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of parliament, or having in the colony the force or effect of such Act, shall be read subject to such Act, order or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative." This clause, the law officer pointed out, rendered "inoperative" the first section of the Canadian Act of 1868 relating to the administration of oaths at the bar of the Senate—a provision subsequently validated by the Imperial Act of 1875—"as being repugnant to the provisions of the British North America Act, and cannot be legally acted upon." It may be fairly argued that the present legislation of the Canadian parliament is also "inoperative," as inconsistent with the express terms of this provision of the Canadian constitution relating to the speakership of the Canadian Senate, unless indeed power is found elsewhere in the British North America Act for the proposed amendment.

See Can. Com.  
J., sess. of  
1873, p. 11.  
Desp. to Lord  
Dufferin, No.  
198, 30th June,  
1873, from  
Lord  
Kimberley.

31 Vict., c. 24.

It is a fact worthy of consideration in this argument, that in the legislative council of the old province of Canada, where the same provision for the appointment of Speaker existed for years, no attempt was made to obtain an alteration of the provision in the way now suggested. Since 1867, in consequence of the doubts that existed as to the powers possessed under the constitution, by the parliament of Canada, no legislation was passed in either House. In fact, the bill of the session of 1893 was the first on the subject that ever reached the Commons from the Upper House. As a matter of fact, whenever it has been necessary from 1867 until the present time to provide for the absence of the Speaker on account of illness or other cause, a new commission has been issued under the Great Seal for the time being. Such a course has no doubt, its inconvenience, and it is no doubt desirable to prevent it in the future, but convenience is no argument for infringing the constitution in any particular.

See remarks of  
Senator  
Gowan, Sen.  
Deb., 1893,  
March 16.

The conclusions to which the writer has come on this important subject may be briefly summed up as follows :

That the parliament of Canada is limited and restrained by the Constitutional Act to the exercise of such powers as are given it in express terms, or by necessary and indubitable implication.

That there is not within the four corners of the Constitutional Act any express or implied power conferring on the parliament of Canada the right to repeal, amend or impair that provision of the constitution which gives the appointment of the Speaker of the Senate to the Governor General.

That the Senate can only be legally constituted with a Speaker so appointed in the chair, and its legislative acts may be called into question if it be at any time differently constituted.

In view then of the doubts that have been raised on a question involving such important considerations—the integrity of the constitution in a measure—it is advisable to solve these doubts beyond dispute as soon as possible.

It is advisable to obtain an opinion from the law officers of the Crown in England whether an Act of the Imperial parliament is necessary to give power to the Canadian parliament to amend the provision in question, or whether there is already sufficient implied power in the Canadian constitution itself to enable the parliament of Canada to deal with the question in the way now proposed.

JNO. GEO. BOURINOT.

HOUSE OF COMMONS, OTTAWA,  
21st April, 1894.

*Colonial Office to His Excellency the Governor General.*

DOWNING STREET, 17th November, 1894.

MY LORD,

I have the honour to acknowledge the receipt of your despatch of the 8th of September last, inclosing copy of an approved report of the Privy Council, embodying a report by the Minister of Justice upon a statute passed during the last session of the Dominion Parliament, entitled "An Act respecting the Speaker of the Senate", the validity of which Act has been questioned in Canada.

In accordance with the wishes of your ministers, I caused papers which accompanied your despatch to be referred to the law officers of the Crown, who have expressed the opinion that the Act referred to is not unconstitutional or repugnant to the provisions of the British North America Act, 1867 ; they think, however, that the question is one

of some difficulty, and in view of the divergent opinions expressed on the subject in Canada, that it would be prudent to pass a declaratory Act in the Imperial parliament affirming the validity of the Canadian Act.

In view of this opinion I should be glad if you would ascertain and inform me whether your government would wish that a declaratory bill of the nature suggested should be introduced into the parliament of the United Kingdom.

I have &c.,

RIPON.

*Report of the Hon. the Privy Council, approved by His Excellency the Governor General on the 20th April, 1895.*

The committee of the Privy Council have had under consideration a despatch dated 17th November 1894, from the Marquis of Ripon in continuation of the correspondence which has taken place upon the subject of an Act passed at the last session of the Dominion parliament, intituled "An Act respecting the Speaker of the Senate" the validity of which has been questioned in Canada.

The Minister of Justice to whom the despatch was referred observes that his lordship states that he has caused the matter to be referred to the law officers of the Crown, who have expressed the opinion that the Act is not unconstitutional or repugnant to the provisions of the British North America Act, 1867. The law officers think, however, that the question is one of some difficulty, and in view of the divergent opinions expressed on the subject in Canada, that it would be prudent to pass a declaratory Act in the Imperial parliament affirming the validity of the Canadian Act. His lordship the Marquess desires to be informed if your Excellency's government would wish that such a bill should be introduced into the parliament of the United Kingdom.

The minister states that the course proposed by Lord Ripon at the suggestion of the law officers, is in accord with a proposal made by the late Sir John Thompson, when explaining the bill in committee for the purpose of overcoming any doubts which might exist as to its constitutionality.

The committee, on the recommendation of the Minister of Justice advise that Lord Ripon be informed that the course suggested by the law officers meets with the entire concurrence of your Excellency's government, and that his lordship be asked to take the necessary steps to promote the requisite legislation in the premises, and that with this view your Excellency may be pleased to cause a copy of this minute, if approved, to be cabled to Her Majesty's government.

JOHN J. McGEE,  
*Clerk of the Privy Council.*

*The Marquess of Ripon to His Excellency the Governor General.*

DOWNING STREET, 15th May, 1895.

MY LORD,—I have the honour to acknowledge the receipt of your despatch of the 22nd of April, inclosing copy of a minute of council requesting that an Imperial Act should be passed to affirm the validity of the "Act respecting the Speaker of the Senate."

I have to acquaint you in reply that the draft of the necessary legislation is now being prepared and will be proceeded with at the earliest opportunity.

I have, &c.,

RIPON.



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*Report of the Honourable the Privy Council, approved by His Excellency the Governor General on the 28th September, 1895.*

On a report dated 18th September 1895, from the Minister of Justice, submitting that in and by an Act of the parliament of Canada, passed in the session held in the 57th and 58th years of Her Majesty's reign, chaptered 11 and intituled "An Act respecting the Speaker of the Senate" it is, by section 4 thereof enacted that the said Act shall not come into force until Her Majesty's pleasure thereon has been signified by proclamation in the *Canada Gazette*.

The minister observes that doubts having arisen as to the power of the parliament of Canada to pass the Act in question, an Act of the Imperial parliament was passed in the session held in the 58th and 59th years of Her Majesty's reign, known as the "Canadian Speaker (appointment of Deputy) Act 1895" which said Act received Her Majesty's assent on the 5th day of September 1895. By this Act it is enacted that the Act of the parliament of Canada in question intituled "An Act respecting the Speaker of the Senate" shall be deemed to be valid, and to have been valid as from the date (23rd July, 1894) when the royal assent was given thereto by your Excellency.

The minister therefore recommends that a proclamation do issue bringing into force the Act of the parliament of Canada aforesaid, (57-58 Victoria, chapter 11).

The Committee submit the above recommendation for your Excellency's approval.

JOHN J. MCGEE,

*Clerk of the Privy Council.*

*Proclamation bringing the Act above mentioned into force, published in the Canada Gazette on the 5th day of October, 1895. Vol. XXIX., No. 14, Page 582.*

## APPENDIX C.

*Report of Hon. Attorney General Mowat upon Acts of Province of Ontario 1873.*

*Copy of an Order of the Executive Council approved by His Honour the Lieutenant-Governor the eighth day of January, A.D. 1874.*

The committee of council have had under consideration a despatch of the honourable the Secretary of State of Canada, dated 9th September, 1873, inclosing a copy of an Order of his Excellency the Governor General in Council dated 30th August last, respecting the Acts passed by the legislature of this province at its last session, and also a copy of the report of the Right Honourable Sir John A. Macdonald as the Minister of Justice upon which the said order is founded.

The committee have also had under consideration the annexed report dated 8th December instant of the Honourable the Attorney General with reference to the said despatch and inclosures.

The committee concur in the report of the Hon. the Attorney General and advise that a copy thereof and of this minute of council be transmitted by your Excellency to the government of Canada for their information.

Certified.

J. G. SCOTT,

*Clerk Executive Council, Ontario.*

*Report of the Hon. Attorney General of Ontario, approved by His Honour the Lieutenant-Governor on the 8th day of January, 1874.*

The undersigned has had under consideration a despatch of the Hon. the Secretary of State of Canada, dated 9th September 1873, inclosing a copy of an order of his Excellency the Governor General in Council, dated 30th August, respecting the Acts passed by the legislature of this province at its last session, and also a copy of the report of the Right Honourable Sir John A. Macdonald, as the Minister of Justice, upon which report the said order is founded.

This report objects to certain enactments in the statutes as being *ultra vires*.

It appears to the undersigned that the objections are criticisms on some of the terms in which the legislature has endeavoured to express its meaning; and that the objections do not apply to the real purpose or intention of the enactments, or to their legal effect.

The first objection refers to sections 7 and 11 of cap. 2, the Act respecting Elections of Members of the Legislative Assembly. The 7th section enacts, that no person shall make any such payment as therein mentioned for the purpose of the election "under penalty of being deemed guilty of a misdemeanour," and in like manner, the 11th section enacts that no agent or candidate shall wilfully furnish to the returning officer an untrue statement "under penalty of being deemed guilty of a misdemeanour."

The report of the Minister of Justice suggests, that this is legislation as to criminal law, and is on that account beyond the jurisdiction of the provincial legislature. But the Dominion Statute, 31 Vic., cap. 71, sec. 3, enacted, that "any wilful contravention of any Act of the legislature of any of the provinces within Canada which is not made, an offence of some other kind *shall be a misdemeanour and punishable accordingly.*" Thus the offence against the Ontario Act in question is by force of express Dominion legislation, a misdemeanour, and punishable as such; and such would be the character and

consequence of the offence, even though not so stated in the local statute. It is not necessary to discuss whether it would be *ultra vires* for the Ontario legislature to call something a misdemeanour which the legislature had received no express authority from the Dominion to make a misdemeanour, but manifestly it cannot be *ultra vires* to say that that will be a misdemeanour, which by Dominion enactment is declared to be a misdemeanour, and which on that account alone must be so called and treated in all legal and other proceedings.

The undersigned would add that it is extremely convenient and useful that where the local legislature in the exercise of its jurisdiction, forbids the commission of any Act, the statute forbidding it should state that, as the fact is, those who may do the forbidden thing will do so "under the penalty of being guilty of a misdemeanour;" and such a declaration being undoubtedly true, there can be no unwarranted assumption of jurisdiction in making the declaration.

The next objection is to section 29, chap. 31. The Act respecting Insane persons. The undersigned cannot suppose that the Minister of Justice meant to question altogether our right to remove from the province the persons to whom this section relates. Our right to that extent cannot be doubted after discussions and admissions in the British parliament and law courts in the matter of the Canadian prisoners thirty five years ago.

The undersigned assumes as unquestionable, that no one outside the province has the right of throwing upon us their afflicted paupers, or insisting on our keeping them against the will of our own legislature; and that we are under no obligation to keep asylums, or make other provision for the insane of the whole world.

The Minister of Justice appears to have read the language of the enactment as assuming the right to something beyond the mere removal of these persons out of the province. This is the enactment: "Upon its appearing to the Lieutenant-Governor that any insane person, confined as aforesaid in any jail or in any asylum for the insane, has come or been brought to this province, from some other province or country, within thirty days prior to his committal to such jail or asylum or any other jail or asylum, it shall be lawful for the Lieutenant-Governor by his warrant, to authorize the removal of such insane person back to the province or country from where he has come or been brought as aforesaid." Now there are provinces and states which adjoin Ontario. It is from these alone that persons of the class referred to are thrown upon the territory. If such persons should be brought from New York State, it was to the borders of that state that it was intended the Lieutenant-Governor should have power to send them. If they should come from Lower Canada or Manitoba, the return intended was to the borders of that province. For the purpose of remedying a practical grievance, it was deemed prudent in this way to provide in the exercise of our authority within our own territory, for the exclusion from the province if we chose, of the insane paupers of adjoining states or provinces. Our legislature has, in the opinion of the undersigned, a clear right to authorize the removal of persons to these adjoining states or provinces, though our officers can exercise no jurisdiction beyond the boundary line; and it would be contrary to all recognized principles of judicial interpretation, to construe the enactment as intended to embrace more than we had jurisdiction to do, especially where, as in the present case the limit of our jurisdiction is too plain for any person to be misled.

The undersigned may observe that no action has hitherto been taken upon the enactment under consideration, and possibly, none ever may be; but the legislature was of opinion that the provision, the language of which is complained of, ought to be made.

Objection is also suggested in the report of the Minister of Justice to the use of the word "offence" in the 13th sec. of chap. 35, in contrast with the provision that the payment of the fine imposed shall not prevent or affect any civil remedy.

The word "offence" is argued in the report to be inapplicable to a violation of the enactment of a local legislature.

The undersigned with submission considers this to be an error. Indeed the word "offence" is, by the Dominion Act, 31 Vic., chap. 71, sec. 3, already quoted, applied to a violation of local enactments, and violations of the provisions of the Tavern and License Act of Ontario have in the *Queen vs. Boardman* 30 U.C. Q.B. p. 553, been expressly



held to be "offences." Indeed breaches of even municipal by-laws are certainly "offences." There are in fact numerous "offences" which are not crimes.

As to the contrast referred to in the report, it may be observed that the local legislature has the right of imposing punishment for the violation of its laws; that this punishment for the offence is inflicted for the good of the public, and is in no sense a civil remedy; a civil remedy being an action or a suit which one subject brings against another, to compel the performance of a contract or duty or to recover damages for the private benefit of the party suing.

The last objection in the report is to part of section 15 of the Act last mentioned, viz.: to that portion of it which declares that "any wilful false statement made by any such witness on oath or solemn affirmation shall be a misdemeanour punishable in the same manner as wilful and corrupt perjury."

Now by the Dominion Act already referred to, it was enacted (section 4), that any oath or solemn affirmation now or hereafter made, subscribed or administered under the authority of any Act of the legislature of any of the provinces within Canada "shall be as binding, and entail the same legal liabilities, and the same consequences with respect to false swearing, perjury or subornation thereof, as if such oath or affirmation were made, subscribed or administered under the authority of an Act of the parliament of Canada; or of any Act or law in force in such province at the time of the union." The Ontario enactment has, therefore, in the clause objected to, but declared what, by the express terms of the Dominion statute, were to be the criminal character and punishment, which belonged to the violation of oaths or affirmations taken under the authority of the provincial legislature whose power to require or sanction such oaths or affirmations is not disputed.

The purpose of all the questioned enactments of the session was clearly within the jurisdiction of the legislature. The legal effect of those enactments is precisely the same as if the enactments had been expressed in terms, to which the objections of the report would have had no semblance of application, and in the opinion of the undersigned these two considerations obviously present a complete answer to all the objections made to the enactments in question.

O. MOWAT,  
*Attorney General.*

Attorney General's Office,  
Toronto, 8th December, 1873.

## TABLE OF DISALLOWED ACTS, 1867-1895.

## ONTARIO.

Act.	Title.	Reasons for disallowance.	Date of Report of Minister of Justice.	Page.
32-33 Vict., 1868-69, chap. 3.	An Act to define the privileges, immunities and powers of the legislative assembly, and to give summary protection to persons employed in the publication of Sessional Papers.	Not within competence of the legislature to pass, and being inconsistent with the provisions of secs. 92 and 96 of the British North America Act.	24 Nov., 1869	93
Chap. 1. ....	The Supply Bill, 1869. ....	6th section objectionable. Act not within competence of legislature to pass, as infringing on jurisdiction of parliament of Canada to fix and provide for judge's salaries.	14 July, 1869 19 Jan., 1870	83 93
37 Vict., 1874, chap. 8.	An Act to amend the Law respecting escheats and forfeitures.	Not within competence of legislature to pass, escheat being a matter of prerogative, with which provincial legislatures have no power to deal.	18 Nov., 1874 16 Mar., 1875	110 119
42 Vict., 1879, chap. 19.	An Act respecting the administration of justice in the northerly and westerly parts of Ontario.	Assumes to provide for administration of justice over territory, the right of province to which is not admitted, as boundaries are not settled. Act encroaches on powers of Dominion government to appoint judges.	20 Jan., 1880 17 Mar., 1880	161 168
44 Vict., 1881, chap. 11. 45 Vict., 1882, chap. 4. 46 Vict., 1882-83, chap. 10.	An Act for protecting the public interests in Rivers, Streams and Creeks.	Power of legislature to take away rights of one, and vest them in another doubtful. Devolves upon government to see that such power is not exercised in flagrant violation of private rights and natural justice. Act is retroactive and overrides a decision of court of competent jurisdiction.	17 May, 1881 20 Sept., 1882 13 Mars, 1883	177 188 192
47 Vict., 1884, chap. 13.	An Act respecting license duties.	Doubt as to competence of Dominion parliament to enact the Liquor License Act, 1883, or with respect to validity of Ontario License Acts, in view of the general laws enacted by parliament. Object arrived at by Act is to render Liquor License Act, 1883, inoperative, by imposing heavy and cumulative tax on persons taking out licenses. Duty of government to protect those obeying laws of parliament.	29 Apr., 1884	194

TABLE OF DISALLOWED ACTS—*Continued.*

## QUEBEC.

Act.	Title.	Reasons for Disallowance.	Date of Report of Minister of Justice.	Page.
32 Vict., 1869, chap. 4.	An Act to define the Privileges, Immunities and Powers of the Legislative Council and Legislative Assembly of Quebec, and to give summary protection to persons employed in the publication of Parliamentary Papers.	Act not within competence of legislature to pass, and being inconsistent with the provisions of sections 92 and 96 of the British North America Act.	3 Nov., 1869 24 " 1869	254 255
38 Vict., 1874-75, chap. 47.	An Act to incorporate the St. Lawrence Bridge Company.	Importance of preserving navigation of River St. Lawrence.	16 Oct., 1876	262
49-50 Vict., 1886, chap. 98.	An Act respecting the Executive Power.	Not within competence of legislature to pass, as provisions of Act withdrawn from provincial legislative authority by 92nd section of British North America Act.	22 Mar., 1887 16 July, 1887	313 338
51-52 Vict., 1888, chap. 20. 52 Vict., 1889, chap. 30.	An Act to amend the Law respecting District Magistrates.	Act not within competence of provincial legislature to pass, being in excess of powers. Power to appoint judges being conferred on Governor General by section 96 of British North America Act.	3 Sept., 1888 18 Jan., 1889 21 June, 1889	345 354 430

## NOVA SCOTIA.

31 Vict., 1868, chap. 21.	An Act to empower the Police Court in the City of Halifax to sentence Juvenile Offenders to the Halifax Industrial School.	Act deals with criminal law, which appertains to Dominion parliament.	12 Aug., 1869	472
34 Vict., 1871, chap. 32.	An Act to regulate Pilotage in the Bras d'Or Lakes in the Island of Cape Breton.	Provincial legislature has no power to regulate fees of pilots, as that can only be done by Dominion parliament.	6 Dec., 1871	476
37 Vict., 1874, chap. 74.	An Act to incorporate the Halifax Co. (Ltd.)	Incorporation of the company is for objects beyond the power and control of provincial legislature.	4 " 1874	479
Chap. 82.	An Act to incorporate the Eastern Steamship Co.	Act not within competence of provincial legislature, as coming within subjects mentioned in British North America Act, section 92, subsection 10, clause A.	25 Mar., 1875	488
Chap. 83.	An Act to incorporate the Anglo-French Steamship Co. (Ltd.)	do do do	4 Dec., 1874	480
49 Vict., 1886, chap. 56.	An Act concerning the collection of Freight, Wharfage and Warehouse Charges.	Act in excess of powers of provincial legislature, as by British North America Act, section 91, parliament of Canada has jurisdiction respecting trade and commerce, navigation, shipping.	30 Mar., 1887	558



TABLE OF DISALLOWED ACTS—*Continued.*

## NEW BRUNSWICK.

Act.	Title.	Reasons for Disallowance.	Date of Report of Minister of Justice.	Page.
45 Vict., 1882, chap. 69.	An Act to incorporate the Fredericton and St. Mary's Bridge Company.	Bridge must be constructed without any interference of the river, and provincial legislature has no power to authorize this interference; parliament of Canada can alone authorize.	13 Feb., 1883 20 July, 1883	731 732

## MANITOBA.

36 Vict., 1873, chap. 2.	An Act to define the privileges, immunities and powers of the Legislative Council and Legislative Assembly of the Province of Manitoba and to give a summary protection to persons employed in the publication of Sessional Papers.	Act not within competence of provincial legislature to pass, as it was inconsistent with sections 92 and 96 of the British North America Act.	21 Aug., 1874	780
Chap 32.....	An Act to incorporate the Winnipeg Board of Trade	Incorporation of boards of trade not being for provincial objects only, but treating of trade and commerce, is alone within competence of parliament of Canada.	1 Sept., 1874	781
38 Vict., 1875, chap. 12.	An Act to regulate proceedings against and by the Crown.	Act is so general in terms that it might be held to apply to claims against Dominion government. In Manitoba serious consequence might issue, as bulk of lands belong to Canada and are still ungranted.	25 May, 1876	796
Chap. 18.....	An Act respecting Escheats, Fines, Penalties and Forfeitures.	Act deals with matters beyond competence of provincial legislature. Subject of Act is on whole a matter of criminal procedure, and act deals with many matters within exclusive competence of the parliament of Canada.	5 Aug., 1876	799
Chap. 33... ..	An Act to afford facilities for the construction of a Bridge over the Assiniboine River between the City of Winnipeg and St. Boniface West.	River being navigable, any authority required for bridging the Assiniboine River, at any point east of Portage la Prairie, should be obtained from the Dominion government.	7 Oct., 1876	804
Chap. 37.....	An Act to amend 37 Vict., chap. 46, intituled: "The Half Breed Land Grant Protection Act."	No notice of passage of Act was given in <i>Manitoba Gazette</i> for 3 months as required, and same was not considered in force in province.	7 Oct., 1876	804
Chap. —..... (Reserved Bill.)	An Act respecting Land Surveyors and the Survey of Land in Manitoba.*	Act premature and unnecessary. Provisions unnecessary and unjust, and would create a monopoly. If assented to, conflict of authority would be created, as Dominion Lands Act provides who shall act as surveyors of Dominion lands.	29 Jan., 1876	795

\*This Bill was reserved for the assent of His Excellency the Governor General.

TABLE OF DISALLOWED ACTS—*Continued.*MANITOBA.—*Continued.*

Act.	Title.	Reasons for Disallowance.	Date of Report of Minister of Justice.	Page.
44 Vict., 1881, chap. 37.	An Act to incorporate the Winnipeg South-eastern Railway Company.	Doubt existing as to power of a provincial legislature to authorize construction of railway extending beyond limits of the province, as trenching on British North America Act, section 92, subsection 10, clause (a). Act conflicts with settled policy of Dominion as evidenced by the clause in contract with Canadian Pacific Railway No. 15, ratified and confirmed by parliament.	4 Jan., 1882	827
Chap. 38.....	An Act to incorporate the Manitoba Tramway Co.	Act conflicts with policy of the government, ratified by parliament, to prevent diversion of traffic of North-west Territories, to railway system of United States, and to endeavour by all means possible to secure it to Canadian railways.	31 Oct., 1882	829
Chap. 39.. ....	An Act to incorporate the Emerson & North-western Railway Co.	do do do ....	31 Oct., 1882	829
45 Vict., 1882, chap. 30.	An Act to Encourage the Building of Railways in Manitoba.	do do do .... Act is also capable of being used to contravene the terms in regard to Canadian Pacific Railway, upon which the boundaries of Manitoba were enlarged.	31 Oct., 1882	829
47 Vict., 1884, chap. 26.	An Act respecting Escheats and Forfeitures and Estates of Intestates.	Decision in Attorney General of Ontario vs. Mercer not applicable to Manitoba. At date of transfer of province to Canada, all ungranted or waste lands in province were vested in Crown and were administered by government of Canada for purposes of Dominion. Section 109 of British North America Act not applicable to province.	25 Aug., 1885	838
47 Vict., 1881, chap. 68.	An Act to incorporate the Emerson & North-western Railway Co.	Apprehension that the company will be able to divert trade from the Canadian system of railways to the railways of the United States.	25 Feb., 1886	842
Chap. 70, and amending Acts	An Act to amend an Act to incorporate the Manitoba Central Railway Co.	do do do ....	26 Feb., 1886	842
48 Vict., 1885, chap. 2.	An Act respecting the Lieutenant-Governor and his Deputies.	Act not within competence of provincial legislature, as legislative authority of provincial legislature, with respect to lieutenant-governor, is excepted by 1st clause of section 92, British North America Act.	13 Jan., 1887	851
Chap. 45.	An Act to incorporate the Rock Lake Souris Valley & Brandon Railway Co.	Act within competence of provincial legislature, but it affects general policy of government, to prevent diversion of traffic from Canadian to the United States system of railways.	10 Jan., 1887	850

TABLE OF DISALLOWED ACTS—*Continued.*MANITOBA—*Continued.*

Act.	Title.	Reasons for Disallowance.	Date of Report of Minister of Justice.	Page.
50 Vict., 1887, chap. 1.	An Act to incorporate the Manitoba Central Railway Co.	Act conflicts with policy of government, which is designed to prevent diversion of traffic from Canadian to the United States system of railways, and violates essential conditions of stipulations with Canadian Pacific Railway.	5 Aug., 1887	857
Chap. 2.....	An Act to incorporate the Winnipeg and Southern Railway Company.	do do do ..	5 Aug., 1887	857
Chap. 4.....	An Act respecting the construction of the Red River Valley Railway.	do do do ..	4 July, 1887	855
Chap. 28.....	An Act for further improving the law.	Immunity from responsibility and liability for their acts, given to contractors and persons employed in construction of Public Works, or doing work under Minister of Public Works or Commissioner of Railways in Manitoba, is of so unusual and extraordinary character, and constitutes manifest interference with private rights.	14 July, 1887	856
Chap. 47.....	An Act to amend the Public Works Act of Manitoba.	Under this Act, railways could be constructed by Minister of Public Works as a public work of Manitoba. Act therefore in conflict with policy of government respecting construction of railways in Manitoba.	4 July, 1887	855
Chap. 54.....	An Act to incorporate the Emerson and Northwestern Railway Co.	Act conflicts with policy of government to prevent diversion of traffic from Canadian system to the United States system of railways, and violates essential condition of stipulation with Canadian Pacific Railway.	5 Aug., 1887	857
52 <sup>nd</sup> Vict., 1888-1889, chap. 45.	An Act to further amend Chapter Fifty-two of Forty-nine Victoria, being the Manitoba Municipal Act, 1886, and amendments.	Imposition of additional percentage on taxes in arrears, is <i>ultra vires</i> of provincial legislature, as it is legislation respecting "interest", which, by sec. 91, Art. 19, of British North America Act, is within jurisdiction of Dominion parliament.	1 Mar., 1890	910
53 <sup>rd</sup> Vict., 1890, chap. 23.	An Act to authorize Companies, Institutions or Corporations incorporated out of their Province to transact business therein.	Act is <i>ultra vires</i> of provincial legislature. Specially affects rights and property of the Canadian Pacific Railway and the Hudson Bay Co. Also on grounds mentioned in report of 16th July, 1887, on Quebec Act 49-50 Vict., chap. 39. ( <i>See</i> page 339.)	21 Mar., 1891	941
Chap. 31.....	An Act respecting the diseases of Animals.	Is legislation affecting trade and commerce as well as matters relating to quarantine, both of which are assigned to parliament by British North America Act.	21 Mar., 1891	946



TABLE OF DISALLOWED ACTS—*Continued.*MANITOBA—*Concluded.*

Act.	Title.	Reasons for disallowance.	Date of Report of Minister of Justice.	Page.
58 Vict., 1895, chap. 4.	"An Act respecting Corporations incorporated out of Manitoba."	Statute is <i>ultra vires</i> so far as it relates to companies incorporated by the parliament of Canada, and for reasons mentioned in report of Minister of Justice on Quebec Act of 1887, chap. 39. ( <i>See</i> page 339) and on Manitoba Act of 1891, chap. 23. ( <i>See</i> page 941.)	24 Oct., 1895 12 Mar., 1896	1005 1009

## BRITISH COLUMBIA.

36 Vict., 1872-73, chap. 2.	An Act to authorize one Justice of the Peace to do any act, matter or thing heretofore to be done by two Justices of the Peace, and to give an appeal to Courts of General or Quarter Sessions.	The Act is legislation respecting Law of Criminal procedure which appertains solely to Dominion parliament.	9 Mar., 1874	1023
37 Vict., 1873-74, chap. 2.	An Act to amend and consolidate the Laws affecting Crown Lands in British Columbia.	Act tends to deal with lands which are assumed to be the actual property of the province, assumption completely ignoring as applicable to Indians of B.C. the honour and good faith with which the Crown has always dealt with their Indian tribes, and <i>see</i> sec. 109 of the B. N. A. Act.	19 Jan., 1875 11 Mar., 1875	1024 1029
Chap. 9. ....	An Act to make provision for the better administration of Justice.	Provision of Act authorizing the Lieutenant Governor to appoint places where County Court Judges shall reside, is practically assuming a power of appointment of Judges.	9 Mar., 1875	1052
38 Vict., 1875, chap. 5.	do do	If Act allowed to go into operation consequence would be to permit Lieutenant Governor in Council to arrange boundaries of County Court Districts or to alter them at pleasure, such alterations as result in appointment by local government of a County Court Judge to new district or Judgeship thus transferring to local government part of power of appointment of judges which is vested in the Governor General.	30 Oct., 1875 28 Apr., 1876	1037 1039
40 Vict., 1877, chap. 22.	An Act to provide for the better administration of Justice.	Enactment in Sec. 27 providing that present incumbents of County Court Bench should not be removed except on terms mentioned for the purpose of appointing professional men, is <i>ultra vires</i> of provincial legislature, as it assumes to limit power of Dominion government in respect of retirement or removal of officers, appointed, paid by, and holding office during pleasure of government of Canada.	21 Feb., 1878 15 May, 1878	1054 1057

TABLE OF DISALLOWED ACTS —*Continued.*BRITISH COLUMBIA—*Continued.*

Act.	Title.	Reasons for Disallowance.	Date of Report of Minister of Justice.	Page.
40 Vict., 1877, chap. 32.	An Act to incorporate the Alexandra Company (Limited).	Incorporation is for objects beyond power and control of provincial legislation, as coming within exception mentioned in 10th and 11th subsections of section 92 of British North America Act.	29 Sept., 1877 15 May, 1878	1052 1057
Chap. 33. ....	An Act to incorporate the British Columbia Insurance Company (Limited).	Powers conferred by Act appear to be too wide, as the company is in effect authorized to do a universal insurance business. Provisions trench on 11th subsection of section 92 of British North America Act. Also on subject of interest.	29 Sept., 1877 15 May, 1878	1053 1057
42-43 Vict., 1878, chap. 25.	An Act relating to Crown Lands in British Columbia.	Act attempts to deal with the question of interest, a subject assigned exclusively to parliament of Canada by the British North America Act.	15 Aug., 1879	1066
Chap. 35. ....	An Act to provide for the better collection of Provincial Taxes from Chinese.	Act declared by Supreme Court of British Columbia to be unconstitutional and void, and the Dominion government cannot allow Act so declared to remain on the Statute-book.	15 Aug., 1879	1067
Chap. 37. ....	An Act to amend the Cariboo Wagon Road Tolls Act, 1878.	Act is interference with the regulation of Trade and Commerce and the possible imposition, under its provisions, of unfair charges upon the Dominion Exchequer.	24 Sept., 1879	1068
43 Vict., 1880, chap. 28.	An Act to amend the Cariboo Wagon Road Tolls Act, 1878.	do do do	27 July, 1881	1078
Chap. 29. ....	An Act respecting Tolls on the Cariboo Wagon Road.	do do do	27 July, 1881	1078
45 Vict., 1882, chap. 8.	An Act to consolidate and amend the laws relating to Gold and other minerals, except coal.	Appointment of Gold Commissioner as a judge performing judicial functions is, in effect, an appointment of a judge made by Lieutenant-Governor instead of by Governor General in Council as provided by British North America Act.	8 May, 1883	1080
46 Vict., 1883, chap. 26.	An Act to incorporate the Fraser River Railway Company.	Acts possibly beyond power of provincial legislation as trenching or exception made by clause (4) of 10th subsection of section 92 of British North America Act. Objects of companies contrary to legislation of parliament and settled policy of country respecting Canadian Pacific Railway. If constructed, they will direct trade from Canada to the United States and from the Canadian to the United States system of railways.	25 Sept., 1883	1082
Chap. 27. ....	An Act to incorporate the New Westminster Southern Railway Co.	do do do	25 Sept., 1883	1082

TABLE OF DISALLOWED ACTS—*Continued.*BRITISH COLUMBIA—*Continued.*

Act.	Title.	Reasons for Disallowance.	Date of Report of Minister of Justice.	Page.
47 Vict., 1884, chap. 3.	An Act to prevent the Immigration of Chinese.	Act discriminates against Chinese. Imposes great penalties upon Chinamen coming into British Columbia. Act involves Dominion and possibly imperial interests. Authority of provincial legislature to pass the Act is very doubtful.	7 Apr., 1884	1092
48 Vict., 1885, chap. 9.	An Act to amend "The Smalls Dyking Act, 1878."	Provisions of Act are in conflict with the grant of a railway belt to the Dominion government by the Act 47 Vict., chap. 14, and Act is <i>ultra vires</i> .	11 Mar., 1886	1096
Chap. 13.	An Act to prevent the Immigration of Chinese.	Act is interference with power of parliament to regulate trade and commerce. Ordinary tribunals can afford no adequate remedy for or protection against injuries resulting from allowing Act to go into operation. See also 47 Vict., 1884, chap. 3, and reasons for its disallowance (page 1092 ante).	" 1886	1099
Chap. 16.	An Act to amend the Land Act, 1884.	Questions as to validity of grants made by government of British Columbia are before the courts. Pending a decision, no Act of legislature should be left to its operation which should have effect of confirming grants so called in question.	" 1886	1103
51 Vict., 1887, chap. 7.	An Act to establish a Court of Appeal from the Summary decisions of Magistrates.	Act at variance with provision of sec. 91 of British North America Act, it being legislation affecting procedure in criminal matters, also at variance with sec. 76 of Summary Convictions Act.	10 Apr., 1888	1108

## PRINCE EDWARD ISLAND.

37 Vict., 1874, chap. (Reserved Bill).	"The Land Purchase Act, 1874."	Provision of Act contrary to principles of legislation in respect to private rights and property. Act does not provide for impartial arbitration for arriving at decision on nature of rights and value of the property involved, and for securing speedy determination and settlement of matters in dispute.	25 Mar., 1874 23 Dec., 1876	1153 1154
39 Vict., 1876, chap. (Reserved Bill).	"An Act to amend 'The Land Purchase Act, 1875.'"	Bill is retrospective in its effects. Deals with rights of parties now in litigation under the Act which it is proposed to amend, or which may yet fairly form the subject of litigation. Absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of 1875.	18 July, 1876	1176

These Bills were reserved for signature to the pleasure of His Excellency the Governor General.



TABLE OF DISALLOWED ACTS—*Concluded.*

## NORTH-WEST TERRITORIES.

Act.	Title.	Reasons for Disallowance.	Date of Report of Minister of Justice.	Page.
47 Vict., 1884, No. 28.	An ordinance exempting certain property from seizure and sale under execution.	Provisions of ordinance open to objection as an interference with rights of creditors.	14 Aug., 1885	1242
1889, No. 11	An ordinance to amend chap. 25 of the Revised Ordinances of the North-west Territories, intituled: "The Game Ordinance."	Ordinance purports to regulate and control the avocation of hunting and fishing by Indians and other subjects of Her Majesty, in violation, so far as Indians are concerned, of their treaty rights. Doubtful if North-west assembly has legislative authority in respect of hunting and fishing upon public domain of Canada.	1 Aug., 1890	1254
No. 24	An ordinance to amend chap. 1 of the Revised Ordinances of the North-west Territories, intituled: "The Interpretation Ordinance."	Ordinance not one which assembly can make, in view of provisions of section 13 of North-west Territories Act (Revised Statutes of Canada, chap. 50) and amendment. Advisory board constituted under ordinance cannot be established.	3 Jan., 1890	1252
No. 25	An ordinance to amend chap. 41 of the Revised Ordinances of the North-west Territories.	These ordinances amend chapter 41 respecting the legal profession. Provisions respecting admission to the bar too restrictive considering conditions of the country. Provisions as to access of advocates and other practitioners to supreme court of North-west Territories too restrictive, and should not become law without approval of parliament, which created, organized and maintained the court.	1 Aug., 1890	1256
No. 26	An ordinance to amend ordinance No. 25 of 1889, intituled: "An ordinance to amend chapter 41 of the Revised Ordinances of the North-west Territories."			
1891-92, No. 21	An ordinance for protecting the public interest in rivers, creeks and streams.	Large proportion of land in North-west Territories is vested in Dominion. Rivers in North-west Territories are property of Crown, notwithstanding land on either side granted to individuals. So far as ordinance affects ungranted waters it deals with public property of Canada, and is therefore ineffectual for purpose it had in view. Its enforcement would lead to confusion and expense.	29 Sept., 1892	1263
1893, No. 19	An ordinance respecting Municipal Assessment, and collection of Taxes and Licenses.	Ordinance <i>ultra vires</i> , in so far as it is inconsistent with, or purports to repeal, or alter any statute of parliament. Section 38 objectionable, as discriminating in matters of taxation against chartered banks, and <i>ultra vires</i> , because Bank Act does not contemplate that private or unincorporated banks should be permitted to do business.	18 May, 1894	1267

## TABLE OF RESERVED

## ONTA

Act.	Title.	Reasons for Reservation.
36 Vict., 1873. ....	An Act to incorporate the Loyal Orange Association of Western Ontario.	None assigned .....
	An Act to incorporate the Loyal Orange Association of Eastern Ontario.	do .....
47 Vict., 1884, ch. 39	The Ontario Factories Act, 1884.....	Lieut.-Governor asked that question as to whether Act is within the competence of legislature should be referred to Supreme Court.

## QUE

31 Vict., 1868 ..	An Act to incorporate the St. Louis Hydraulic Co.	That 2nd clause of Act which authorized construction of this dam falls within powers of parliament of Canada under 10th paragraph of 91st section of British North America Act.
53 Vict., 1890.	An Act to legalize the marriage and contract of marriage of Aimé Bourassa and Dame Purissima Robert.	Infringes on the legislative powers exclusively assigned to the Dominion parliament by British North America Act, section 91, subsection 26, "marriage and divorce," and beyond powers of provincial legislature to enact.
54 Vict., 1890 ..	An Act to render the marriage contracted between Fredk. Pratt and Marie Albina Thibault civilly valid.	do do . . .
55-56 Vict., 1892	An Act to legalize the marriage of Henri Aimé Bourassa and Dame Purissima Robert.	do do .....
	An Act to incorporate La Banque Hypothécaire Canadienne.	Dominion parliament alone has power to legislate on banking and the incorporation of banks. Name apt to create confusion.

## NOVA

31 Vict., 1868	An Act in reference to the Militia .....	
37 Vict., 1874	An Act to facilitate arrangement between railway companies and their creditors.	Subject not within jurisdiction of provincial legislature, as touching on questions of bankruptcy and insolvency.
42 Vict., 1879	An Act to incorporate the Nova Scotia District Branch of the Independent Order of Oddfellows.	14th section trenches on jurisdiction of parliament as it attempts to deal with crimes.

## BILLS, 1867-1895.

## RIO.

How dealt with.	Reasons for Action.	Date of Report of Minister of Justice.	Page.
No action taken.....	Bill considered within the jurisdiction and competence of legislature, as objects are provincial.	25 Aug., 1873.. . . .	104
do .....	do do .....	25 Aug., 1873.....	104
do .....	Minister of Justice deemed it better to leave question of competence of provincial legislature to be tested in the ordinary way in the courts.	20 Jan., 1885.....	195

## BEC.

Assent not given .....	Apart from question of constitutionality of Act, it 11 Jan., 1869..... would not be safe in public interest to allow Bill to become law.		250
No action appears to have been taken on this Bill.			436
do .....			438
do .....	Should Act be passed as a statute of the province of Quebec, Minister of Justice would have opportunity of considering questions involved, but at present advises no action thereon.	16 Feb., 1893.. . . .	458
do .....	do do .....	16 Feb., 1893.. . . .	458

## SCOTIA.

No formal refusal of assent, but Bill allowed to lapse out at end of year.	Nova Scotia legislature had no right or authority to pass the Bill.		471
Assent given .....	Bill comes within judgment of Judicial Committee of Privy Council in case of L'Union St. Jacques de Montréal vs. Dame Julie Belisle. Bill provides full machinery for enabling a company temporarily embarrassed, to provide means for continuing their operations and business.	8 Dec., 1874.. . . .	484
Assent withheld.....	Provisions of Bill clearly beyond powers of provincial legislature. Objectionable provisions, if allowed to stand, might cause inconvenience and embarrassment.	16 June, 1879.....	504



## TABLE OF RESERVED

NEW

Act.	Title.	Reasons for Reservation.
31 Vict., 1867-68 . . .	An Act relating to presentations to Parishes in city and county of St. John and county of Westmoreland in province of New Brunswick.	
32 Vict., 1869. . . . .	A Bill relating to the appointment of Justices of the Peace in the several counties of this province.	
32 Vict., 1869, chap. 93.	A Bill relating to Marriage Licenses.	Not within jurisdiction of provincial legislature as trenching on subject of marriage and divorce, British North America Act, sec. 91, para. 26.
. . . . .	An Act in addition to and in amendment of chap. 60, Title VIII., of Revised Statutes of Harbours.	Not within jurisdiction of provincial legislature.
34 Vict., 1871 . . . . .	An Act relating to the Synod of the Church of England in the Diocese of Fredericton in the province of New Brunswick.	1st section contained the clause "any rights of the Crown, notwithstanding."
37 Vict., 1874 . . . . .	A Bill to further continue and amend the Act to incorporate the Meduxnakik Boom Co.	In consequence of protest alleging that it would deprive American citizens of the rights secured to them by the Ashburton Treaty.
55 Vict., 1892. . . . .	An Act to declare the rights of the Crown as represented by the Government of the province in certain public lands and property.	No opinion expressed on subject of legal rights involved.
57 Vict., 1894 . . . . .	An Act to amend an Act respecting the use of Tobacco by Minors.	Doubt as to whether the legislature, in passing this bill, is not attempting to make sale of tobacco to minors, a crime, and if so, if sufficient power to pass such an Act is conferred on provincial legislatures by the British North America Act.

MANI

35 Vict., 1871. Bill No. 44.	An Act to empower the Lieutenant-Governor to authorize the construction of Railways in this province.	Bill exceeded jurisdiction conferred upon legislature by Union Act, and in addition no provision made for compensation for infringement of rights of property or other vested rights, and it might thwart or impede any operations for construction of interoceanic railway under provisions of Dominion Act.
Bill No. 45.	An Act to authorize the construction of a Telegraph Line in this province.	Bill exceeded jurisdiction conferred upon legislatures by Union Act.
Bill No. 46.	An Act to incorporate the Western Railway of Manitoba.	Similar reasons to these assigned for reservation of Act to empower Lieutenant-Governor to authorize construction of railways in province.

## BILLS, 1867-1895.

## BRUNSWICK.

How dealt with.	Reasons for Action.	Date of Report of Minister of Justice.	Page.
Assent withheld and Bill allowed to lapse at end of year.			649
Assent given	Bill within jurisdiction of legislature of New Brunswick.	14 Aug., 1869.	650
do	Bill within jurisdiction of legislature of New Brunswick as power of legislating on subject conferred on provincial legislatures by British North America Act, sec. 91, para. 26.	26 Nov., 1869. 11 Apr., 1870.	655 658
Assent withheld	Bill considered beyond jurisdiction of provincial legislature.	5 Apr., 1870.	659
Assent given.	Considered within jurisdiction of New Brunswick legislature, and no rights of Crown affected by it.	6 June, 1871.	661
do	Bill as originally submitted had been materially changed and several conditions added, qualified to secure free navigation of river to all lumber manufacturers and protest withdrawn.	27 May, 1874.	707
No action taken.	Unable to agree with view of law and facts on which the bill seems to have been passed.	26 Jan., 1893.	757
do	Doubtful if reserved bill or the Act (56 Vict., chap. 36) which it amends, fall within legislative authority of the province. Inconveniences which might arise if Governor General were called upon to give effect to legislation of this kind, are sufficiently serious to justify withholding of assent, and usual course with respect to similar legislation should be followed.	14 Mar., 1895.	762

## TOBA.

Assent withheld	Contrary to first principles of legislation and for same reasons as assigned for the reservation of the Act.	25 Nov., 1871.	
do	Act should be passed by Dominion parliament and also for reasons assigned for reservation of Act respecting construction of railways.	25 Nov., 1871.	770
do	do do do	25 Nov., 1871.	770

TABLE OF RESERVED  
MANITOBA

Act.	Title.	Reasons for Reservation.
35 Vict., 1871, Bill No. 47.	An Act to incorporate the Red River Bridge Co. of Manitoba and to authorize the construction of a Bridge across the Red River opposite or near Fort Garry, and to levy tolls on said Bridge.	Proposed bridge would interfere with the navigation of river.
35 Vict., 1872.....	An Act to incorporate the Manitoba Central Railway Co.	Unwise to grant charter pending location of interoceanic railway.
	An Act to incorporate the Assiniboine and Red River Navigation Co.	Trenches on ground reserved for Dominion parliament respecting navigation and shipping.
	An Act to constitute and incorporate the Law Society of Manitoba.	Apart from question of policy, bill is premature, and obstacles should not be placed in way of any person in good standing at bar of other provinces to practice law in Manitoba. Undesirable to restrict the selection of judges. Power to regulate fees is objectionable.
35 Vict., 1872. . .	An Act respecting Land Surveyors. . .	Objectionable on much the same grounds as Act respecting law society. Creates monopoly, which is unwise in present state of new and undeveloped country.
36 Vict., 1873. . .	An Act respecting the Study and Practice of the Law.	Questionable whether province be sufficiently advanced, and whether bar is of sufficiently stable, settled character, to justify placing control of bar in hands of practitioners resident in province.
	An Act to amend the Act 36th Vict., Chap. 20, for the prevention of Prairie Fires.	Certain clauses contrary to sound principles, and likely to prove injurious to interests of Dominion. They make surveyors, railway companies and contractors liable for result of fires caused by their men, irrespective of facts whether there was negligence or whether men were under control of employers.
36 Vict., 1873, chap. 12.	An Act to impose a Tax on Wild Land.	Similar Act passed in British Columbia was reserved.
Chap. 13.	An Act respecting Aliens	Doubts entertained as to power of provincial legislature to deal with subject. As Act deals with holding of property by aliens, assent recommended.
Chap. 14.	The Half-Breed Land Grant Protection Act.	Act is retroactive, dealing with existing contracts and cancelling them. Opens fruitful door for litigation. No machinery provided for carrying out sale of lands on which lien is established.
Chap. 15.	An Act to incorporate the Eastern Railway Company of Manitoba.	Possible interference with line of Pacific railway. Objectionable clause in bill making shareholders partners, though limiting liability to amount of shares.



## BILLS, 1867-1895.

—Continued.

How dealt with.	Reasons for Action.	Date of Report of Minister of Justice.	Page.
Assent withheld .....	Interferes with navigation of river—a river navigable at certain seasons for a distance of 400 miles.	25 Nov., 1871 .....	770
do .....	Same reasons as those assigned for reservation.	24 Sept., 1872 .....	772
do .....	Act within competence of provincial legislature but objectionable, as 2nd clause provides that shareholders of company shall be, to all intents, partners in same. This is contrary to first principles governing incorporation of companies. If promoters desire to do business on Red River beyond limits of Manitoba or within United States, Act of incorporation should be obtained from Dominion parliament.	24 Sept., 1872 .....	772
do .....	For same reasons as those assigned for reservation.	24 Sept., 1872 .....	773
do .....	For same reasons as are assigned for reservation.	25 Sept., 1872 .....	773
No action appears to have been taken upon this Bill.			775
Assent withheld. ....	Provisions appear likely to seriously interfere with survey of public lands.		777
Assent given.....	Act proposes annual tax on all lands of province, but exempts lands: (1) vested in Her Majesty; (2) held for benefit of Indians; (3) entered as homesteads; (4) held by Canadian Pacific railway; (5) set apart for half-breed minors.	21 Feb., 1874. . .	777
do .....	Legislation respecting property and civil rights under control of provincial legislature. Act deals with holding of property by aliens.	21 Feb., 1874. . .	777
do .....	Act beneficial in protecting interests of persons entitled to share in half-breed land grant.	21 Feb., 1874. ....	778
do .....	Act considered unobjectionable .....	25 Feb., 1874. . .	779

TABLE OF RESERVED  
MANITOBA

Act.	Title.	Reasons for Reservation.
38 Vict., 1875.	An Act respecting Land Surveyors and the Survey of Lands in the province of Manitoba.	Bill deemed objectionable for following reasons: (1) Bulk of lands in province, being yet Crown lands, belong to the Dominion, and bill prohibits any one from acting as surveyor unless possessing proper qualifications. (2) Deals with whole question of mode of surveying lands in province. (3) Creates conflict of authority, as Dominion Lands Act provides who shall act as surveyors of Dominion lands and mode of survey of Dominion lands; also provides for board of examiners for admission of deputy surveyors, as does present bill. Provisions of bill are illiberal and unjust, and would create a monopoly.
40 Vict., 1877.	An Act to incorporate the Manitoba Investment Association (Ltd.)	Powers conferred the association were beyond competence of provincial legislature, as Dominion parliament has exclusive authority in respect to "banking and interest." Bill appeared to authorize association to carry on some of the branches of business usually regarded as banking.
	An Act to amend the Act passed in the 37th year of Her Majesty's reign, intitled: "The Half-breed Land Grant Protection Act."	Previous Act passed in 1875 was disallowed ( <i>see</i> Manitoba, 38 Vict., chap. 37, pp. 804 and 805).
53 Vict., 1890: Chap. 56.	Bill respecting Sales of Lands for Taxes.	Comparison of Bills with clause of chap. 45 of 52 Vict. to which exception was taken by Report of Minister of Justice shows them to be virtually the same as above Act. Lieutenant-Governor considered himself bound by considerations which induced disallowance of chap. 45 of 52 Vict. Assent to Bills calculated to lead to confusion in municipal accounts and injustice to individuals.
Chap. 57.	Bill respecting arrears of Taxes in the City of Winnipeg.	
54 Vict., 1891: Chap. 8.	An Act to authorize companies, institutions or corporations, incorporated out of this Province to transact business therein.	Comparison of Bill with chap. 23 of 53 Vict. (which was disallowed) shows that it is virtually a re-enactment of the Act chap. 23, 53 Vict. Though assent might have been given, yet having regard to peculiar conditions obtaining in Province at the time and for reasons given in despatch (pages 989 and 990) the Lieutenant-Governor reserved his assent.

BRITISH

35 Vict., 1872	An Act to amend the Qualification and The 13th clause of Bill precluded exercise of electoral franchise by Chinese and Indians, in contravention of instructions to governors, and of British North America Act, 1867, section 91, subsection 24.
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## BILLS, 1867-1895.

—Concluded.

How dealt with.	Reasons for Action.	Date of Report of Minister of Justice.	Page.
Assent withheld . . . . .	Same reasons as those assigned for reservation, and see also pages 773 and 794.	29 Jan., 1876 . . . . .	795
No action taken. . . . .	Question raised is one of great difficulty. Inconveniences might arise if Governor in Council called upon to give vitality to provincial legislation of this description.	4 Oct., 1876 . . . . .	814
Act left to its operation. . . . .	Length of time which has elapsed since passing of original Act, during which time the Half-breeds, as a rule, became well acquainted with value of their interests in the land.	3 May, 1878 . . . . .	821
No action taken. . . . .	Bills might have been dealt with in usual manner without having been reserved for Governor General's assent. Chap. 56 if assented to, would have had to be disallowed, as it was re-enactment of provisions which had already been disallowed.	18 March, 1891 . . . . .	927
No action taken. . . . .	No report on the Reserved Bill appears to have been made by the Minister of Justice.		989

## COLUMBIA.

Assent given. . . . .	Imperial instructions to Governors of colonies are not applicable to Lieutenant-Governors. No instructions of such nature in commission or instruction to Governor General since 1867. Subsection 24, section 91, of British North America Act, has reference to legislation connected with Indians generally and to lands reserved for them. Section 92 of British North America Act confers on each province the right of legislating as to its franchise.	18 Sept., 1872. . . . .	1014
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TABLE OF RESERVED  
BRITISH

Act.	Title.	Reasons for Reservation.
35 Vict., 1872.....	An Act to amend the Military and Naval Settlers' Act, 1863.	Operation of Act would be in conflict with 11th section of terms of union with Canada.
	An Act to impose a Wild Land Tax.	Doubtful whether it may not be considered that it may apply to land hereafter to be appropriated for railway purposes under 11th section of terms of union.
36 Vict., 1872-1873, chap. 43.	An Act to render legitimate children born out of lawful wedlock whose parents now are, or may hereafter, under certain restrictions, be married.	.....
40 Vict., 1877, No. 35.	An Act to amend the Gold Mining Amendment Act, 1872.	Act gives jurisdiction in all personal actions to gold commissioners in Kootenay and Cassiar, and appears to trench on 36th sec. of British North America Act, which vests appointment of supreme and county court judges in Governor General alone, and provincial legislature has not power to make the appointments mentioned in the Act.

PRINCE EDWARD

37 Vict., 1874, chap. 30.	An Act to vest a certain portion of Government House farm in the city of Charlottetown for certain purposes therein mentioned.	Act was passed 14th June, 1873, whereas addresses of legislative council and assembly of Prince Edward Island expressing desire to enter confederation are dated 28th May, 1873. Transfer of any public property after that date would clearly be incorrect as regards its subsequently becoming a province.
	The Land Purchase Act, 1874.....	Affects private rights by enforcing compulsory sale by proprietors of 500 acres or upwards, at prices to be determined under system of arbitration.
38 Vict., 1875.....	The Land Purchase Act, 1875.....	Bill of similar character passed in 1874 had been reserved.
39 Vict., 1876	An Act to amend the Land Purchase Act, 1875.	None assigned.....
	An Act to vest a certain portion of Government House farm in the city of Charlottetown for certain purposes therein mentioned.	No reasons assigned: former Act on same subject was disallowed.
11 Vict., 1878	An Act to repeal certain Acts relating to the Church of England in this province, and to make provision in lieu thereof.	Among Acts repealed by this Act is a permanent one declaring the liturgy of the church established by laws of England in Prince Edward Island shall be deemed fixed form of worship in Island. Act therefore disestablishes Church of England and interferes with prerogative of the sovereign as the temporal head of the church. Act has no suspending clause.

## BILLS, 1867-1895.

COLUMBIA—*Concluded.*

How dealt with.	Reasons for Action.	Date of Report of Minister of Justice.	Page.
Assent withheld .....	For same reasons as assigned for reservation.....	25 Sept., 1872.....	1013
Assent withheld.....	do do .....	8 Oct., 1872.....	1013
No action appears to have been taken on this Bill.			1018
Assent withheld .....	Jurisdiction of mining court in districts referred to will be greater than that of county court, and equal to that of supreme court. If assented to it would be necessary for a supreme court judge to proceed to district named, to try criminal cases. Bill should have been disposed of by local authorities themselves.	29 Sept., 1877. ....	1054

## ISLAND.

Assent withheld.....	For reasons similar to those assigned for reservation.	25 Mar., 1874.....	1153
do .....	Act objectionable as it does not provide for impartial arbitration in which proprietors would have a representation.	23 Dec., 1874. ....	1154
Assent given.....	Objections to bill in previous session were removed and bill is one coming within the competence of a provincial legislature.	26 May, 1875.....	1161
Assent withheld .....	Bill is retrospective in its effects. Deals with rights of parties now in litigation under the Act which it is proposed to amend. Absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of 1875.	18 July, 1876.....	1176
Assent given.....	No injury will result to the Government House grounds by alienation of the land. Present Lieutenant-Governor sees no objection to bill being passed.	2 Dec., 1876.....	1182
do .....	Bill within legislative authority of the provincial legislature, and is one in which no Dominion or Imperial interests are involved.	14 Apr., 1879 .....	1200

TABLE OF RESERVED  
PRINCE EDWARD

Act.	Title.	Reasons for Reservation.
41 Vict., 1878.....	An Act to incorporate the Provincial Grand Orange Lodge of Prince Edward Island and the subordinate Lodges in connection therewith.	Similar bills passed in Ontario in 1873 were reserved.
55 Vict., 1892. ....	An Act respecting the Legislature...	.....

NORTH-WEST

1895, No. 29.....	An Ordinance to amend and consolidate as amended the Ordinances respecting Schools.	Lieutenant-Governor had no opportunity of examining its provisions.
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BILLS, 1867-1895—*Concluded.*ISLAND—*Concluded.*

How dealt with.	Reasons for Action.	Date of Report of Minister of Justice.	Page.
No action taken.....	Same reasons as given for action taken with reference to similar bills passed in Ontario in 1873. (See ante pages 79 and 80.)	14th June, 1879.....	1203
do .....	Objects of bill are to abolish the legislative council ; to provide for legislature consisting of one House only ; to change to some extent the representation and amend laws relating to election for legislature. These are matters within competence of legislature and reason given by Lieutenant-Governor are not sufficient to warrant Governor General in accepting responsibility respecting measure.	26th January, 1893..	1225

## TERRITORIES.

No action taken thereon.	Lieutenant-Governor should not have reserved the ordinance.	20th December, 1895. 10th February, 1896.	1276 1279
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TABLE OF ACTS, 1867-1895.  
ONTARIO.

Act.	Title.	Reasons for Objection or Comment.	Page.
31 Vict., 1867-68, chap. 5.	An Act to repeal chap. 20 of Consolidated Statutes of Canada, intituled: "An Act respecting the Provincial Duty on Tavern-keepers, and to make further provision respecting the same."	Sec. 5 declares certain counterfeiting to be forgery, which is legislation respecting the criminal law.	81
Chap. 6.	An Act to repeal chap. 13 of the Consolidated Statutes of Canada, so far as the same relates to Ontario, to authorize the publication of an <i>Ontario Gazette</i> , and to make provision for inquiries concerning public matters and official notices.	Sec. 2 declares that wilfully false statements made before commissioners is a misdemeanour, which is legislation respecting the criminal law.	79
Chap. 17.	An Act to continue for a limited time the Acts therein mentioned.	Sec. 1, continuing Bankruptcy Act (7 Vict., chap. 10), and sec. 3, extending period for continuance of certain savings banks, deal with subjects within jurisdiction of Dominion parliament.	80
Chap. 19.	An Act respecting Gold and Silver Mines.	40th sec. objectionable, as dealing with criminal law.	79
Chap. 20.	An Act respecting Registrars, Registry Offices, and the Registration of Instruments relating to Lands in Ontario.	Secs. 82 and 83 objectionable, as dealing with criminal law.	79
Chap. 29.	An Act for the encouragement of Agriculture, Horticulture, Arts and Manufactures.	50th sec. objectionable, as dealing with criminal law.	79
Chap. 30.	An Act to amend the Municipal Institutions Act of Upper Canada, 29-30 Vict., chaps. 51 and 52.	Sec. 12 provides qualification for "all parliamentary elections." If parliament of Canada is meant the section is <i>ultra vires</i> .	80
Chap. 38.	An Act to incorporate the Clifton Suspension Bridge Company.	Incorporates a company for construction of bridge beyond limits of province.	80
Chap. 64.	An Act to incorporate the Board of Trade of the Town of Guelph.	Incorporates a company for promoting and extending trade and commerce. Sec. 22 affects regulation of trade and commerce, and sec. 23 concerns criminal law.	81
32-33 Vict., 1868-69, chap. 22	An Act to amend chap. 15 of Consolidated Statutes of Upper Canada, intituled: "An Act respecting County Courts."	Sec. 2 provides that judges shall be subject to removal by Lieutenant-Governor for reasons. Inconveniences arising from independent power of removal in Lieutenant-Governor as well as in Governor General.	89
Chap. 39.	An Act to provide for the Registration of Births, Marriages and Deaths.	Doubt whether this subject comes within 92nd clause of British North America Act, and that penalty provided by 16th sec. of Act might vest in Crown for purposes of Dominion.	82
Chap. 34.	An Act relating to Mining.	Secs. 34 and 35 might be held to be portions of criminal law.	82
Chap. 36.	An Act to amend and consolidate the Law respecting the Assessment of Property in Ontario.	Sec. 117 is <i>ultra vires</i> , as it makes act of fraudulent person, as therein set out, a misdemeanour; also prescribes fine and imprisonment; and if so is a portion of criminal law.	82

TABLE OF ACTS, 1867-1895—*Continued.*ONTARIO—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
33 Vict., 1869 ...		Chaps. 5, 11, 12, 19, 24, 28 and 71 were not reported upon by Minister of Justice, and were consequently left to their operation.	
34 Vict., 1870-71, chap. 4.	An Act to provide for the Organization of the Territorial District of Thunder Bay.	Sec. 13, prohibiting appeal from judgment or decision of stipendiary magistrate, affects criminal procedure, and is <i>ultra vires</i> .	100
Chap. 17....	An Act to provide for the establishment and government of a Central Prison for the province of Ontario.	Secs. 13, 14, 15 and 38 deal with matters of criminal procedure.	100
Chap. 75....	An Act to incorporate the Simpson Loom Company.	Sec. 2 is <i>ultra vires</i> , as it affects the patent laws.	101
35 Vict., 1871-72, chap. 13.	An Act to provide for the institution of suits against the Crown by Petition of Right and respecting procedure in Crown suits.	Act so general in its terms that it might apply to claims against Dominion government. Fiat of Lieutenant-Governor could not be granted in case of claims against the Dominion. Minister of Justice subsequently of opinion that Act was unobjectionable, as it can only be made to apply to legislation in matters within the jurisdiction and could not apply to Crown in Dominion matters.	102
Chap. 36....	An Act for the prevention of corrupt practices at Municipal Elections.	17th section seems to deal with evidence to be received in criminal matters, and is <i>ultra vires</i> .	102
Chap. 37....	An Act to establish Municipal Institutions in the Districts of Parry Sound, Muskoka, Nipissing and Thunder Bay.	Section 26 empowers municipal council to limit number of licenses for sale of intoxicating liquors, a power not possessed by provincial legislature itself.	102
36 Vict., 1873, chap. 2.	An Act to amend the Law respecting Elections of Members of the Legislative Assembly and respecting the trial of such Elections.	Sections 7 and 11 <i>ultra vires</i> as they declare certain actions of election agents and candidates to be misdemeanours.	103
Chap. 3....	An Act respecting the appointment of Queen's Counsel.	Not reported upon.	
Chap. 4....	An Act to regulate the precedence of the Bar of Ontario.	do	
Chap. 31....	An Act to make further provision as to the custody of insane Persons.	Section 29 authorizing Lieutenant-Governor to extradite an insane person is <i>ultra vires</i> .	103
Chap. 34....	An Act to amend the Acts respecting Tavern and Shop Licenses.	Not reported upon	
Chap. 35....	An Act to provide for the incorporation of Immigration Aid Societies in the Province of Ontario.	In section 13, the use of the term "offence" is inexpedient. Section 15 deals with criminal law, by declaring that certain false statements shall be misdemeanours.	103
Chap. 47....	An Act respecting the Municipal Loan Fund Debts and respecting certain payments to Municipalities.	Not reported upon.	
Chap. 48....	An Act respecting Municipal Institutions in the Province of Ontario.	do	



TABLE OF ACTS, 1867-1895—*Continued.*ONTARIO—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
36 Vict., 1873, chap. 50.	An Act to organize the Municipality of Shuniah, and to amend the Acts for establishing Municipal Institutions in unorganized Districts.	Unobjectionable if territory prove to be within limits of province. Deemed advisable to call attention to Act, lest if allowed to go into operation, acquiescence in territory claimed by province, might be assumed.	104
37 Vict., 1874, chap. 5.	The Ballot Act, 1874.....	Section 27 provides punishment for forgery, &c., which is not within competence of legislature, as conflicting with 32-33 Vict., chap. 19.	106
Chap. 7.....	An Act to make further provision for the due administration of Justice.	Assumes to deal with appointment of judges, and is <i>ultra vires</i> of provincial legislature.	106
Chap. 28.....	An Act to amend and consolidate the Public School Law.	Sections 184 and 189 trench on criminal law.	107
Chap. 32.....	An Act to amend and consolidate the law for the sale of fermented or spirituous liquors.	Sections 24, 25 and 26 are prohibitory in respect of trade and commerce, a subject not within competence of provincial legislature.	107
Chap. 59....	An Act to amend the Act incorporating the Port Whitby and Port Perry Railway Company.	Disallowance asked on grounds that it trench on rights vested in Harbour Co., and that Act calculated to interfere with navigation. Rights of Crown preserved by Act of 1884, also Rights of Crown in respect of navigation. No action taken on Act.	128
38 Vict., 1874, chap. 4.	An Act respecting the operation of the Statutes of Ontario.	Language of section 6 is vague and open to construction that it applied to statutes of Dominion. Section 12 enacts that certain statutes relating to Ontario should be repealed.	143
Chap. 12....	An Act to amend the Act respecting Division Courts.	Provision making it duty of county court judge to hold division court in any county, on being ordered by Lieutenant-Governor, objectionable as assuming power of appointment, which is vested in Governor General.	143
Chap. 19....	An Act respecting apprentices and minors.	Sections 17 and 18 trench upon the criminal law.	143
Chap. 28....	An Act to provide for voting by ballot at municipal elections.	Section 30 imposes punishment against forgery, counterfeiting, &c., of ballot papers which trenches on criminal law and procedure.	143
Chap. 41....	An Act to enable the Corporation of the City of Kingston to close up a part of Union Street, with the water slip in front of the same, in the said city, and for other purposes.	Act proposes to give power to close up part of public harbour of Kingston, which is objectionable.	142
Chap. 66....	An Act to incorporate the Alliance Insurance Company.	Powers granted are too wide, and are open to objection as a matter of policy.	142
Chap. 67....	An Act to incorporate the Canada Fire and Marine Insurance Company.	Powers granted are objectionable, as being too wide. Word Canada in the name also objectionable.	142

TABLE OF ACTS, 1867-1895—*Continued*ONTARIO—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
38 Vict., 1874, chap. 68.	An Act to incorporate the Industrial and Commercial Life Assurance Company of Canada.	Powers granted are too wide, and objectionable as matter of policy. Act also deals with insolvency.	142
Chap. 75....	An Act respecting the Union of certain Presbyterian Churches therein named.	Act is <i>intra vires</i> of legislature, but 7th section deals with matters beyond competence of legislature.	142
Chap. 78....	An Act respecting the Methodist Church of Canada.	1st sec. purports to deal with property outside of Ontario, and clause is <i>ultra vires</i> and inoperative.	142
39 Vict., 1875-76, chap. 8.	An Act respecting certain Administrative matters therein mentioned.	Sections of Act deal with office and functions of Lieutenant-Governor and power to appoint deputy. Legislature cannot empower Lieutenant-Governor in Council to appoint a deputy for the execution of any of his offices or functions, properly pertaining to him in his capacity as Lieutenant-Governor. Clause in question should render clear, extent of power, by excepting from its operation all powers and functions which are attributes of Lieutenant-Governor and limiting its operation to such as may lawfully be conferred on persons filling office of Lieutenant-Governor by provincial legislature.	145
Chap. 9....	An Act respecting the Legislative Assembly.	Act contains clauses conferring privileges upon the assembly or to members. Range of these powers has been subject of discussion. Several provisions notably secs. 11, 12, 13 and 14, are open to question as being <i>ultra vires</i> of local legislation.	146
39 Vict., 1875-76, chap. 14.	An Act respecting County Court Judges.	Main provisions of Act, by reason of arrangements for meeting and action of judges concerned, unobjectionable, and as provisions of 8th sec. as to judge holding courts outside of his own county, is conditional on order of Governor-General in Council, is unobjectionable.	147
Chap. 23....	An Act respecting Insurance Companies.	Open to objections previously taken as to Acts incorporating insurance companies.	150
Chap. 24....	An Act to secure uniform conditions in Policies of Fire Insurance.	Question as to competency of legislature to pass this law, more particularly with respect to contracts made out of province.	147
Chap. 26....	An Act to amend the Law respecting the Sale of Fermented or Spirituous Liquors.	Provisions of Act raise question as to licenses, which is <i>sub judice</i> .	147
Chap. 32....	An Act to make further provisions respecting Permanent Building Societies.	Act deals with general management of permanent building societies in the spirit of recent legislation on subject by Dominion parliament. Doubt exists as to which legislature is competent to deal with this question.	148
p. 77....	An Act to amend the Acts relating to the London, Huron and Bruce Railway Company.	Sections conferring certain powers on the Great Western Railway Company are <i>ultra vires</i> .	148

TABLE OF ACTS, 1867-1895—*Continued.*ONTARIO—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
39 Vict., 1875-76, chap. 79.	An Act to incorporate the Niagara Falls and Lake Erie Railway Company.	Sections 33 and 34 purporting to authorize action by other railway companies, not limiting them to railway companies under provincial authority, are <i>ultra vires</i> .	148
Chap. 92.	An Act to incorporate the Home Fire Insurance Company.	Provisions contained in Act as to winding up of the company, trench upon insolvency.	149
Chap. 93.	An Act to incorporate the Union Life Insurance Company.	Act in no wise limits the fire insurance business to be done by the company. Act should be amended by such limitation as to range of business, as may bring company within range of local legislature, Sees. 16, 17 and 18 relate to winding up of the company, and therefore trench on insolvency.	149
40 Vict., 1877, chap. 4.	An Act respecting the Administration of Estates of Intestates dying without known relatives in Ontario.	Nothing in 3rd section limiting the sale of real estate of intestates which it authorizes, to property situate in Ontario. Powers of legislature do not extend to authorize sale of real estate situate outside limits of province.	151
Chap. 6.	An Act respecting the Revised Statutes of Ontario.	Original roll, which by proclamation, is to come into force, is deposited in office of clerk of legislative assembly, and not readily accessible, not necessary to critically examine the roll,	151
Chap. 8.	An Act to provide for certain amendments of the Law.	Sections 76, 77 and 78 place certain restrictions as to issue of licenses for the sale of liquor. Question of authority of local legislatures in respect of restrictions is now before the courts.	152
Chap. 14.	An Act respecting aid to certain railways and the creation of a Railway Land Subsidy Fund.	Provisions of sec. 3, subsec. 8, are too wide, as they might apply to rails of company on that part of line outside of Ontario, over which local legislature has no control.	152
Chap. 17.	An Act for the Encouragement of Agriculture, Horticulture, Arts and Manufactures.	Section 15 trenches upon criminal law respecting malicious injuries to property.	153
Chap. 18.	An Act to amend the Acts respecting the sale of Fermented or Spirituous Liquors.	Power of provincial legislatures to deal with this subject is questioned. Sees. 16, 18, 19, 20, 21, 22 and 23 use the word "offence" previously objected to.	153
Chap. 24.	An Act respecting the Territorial and Temporary Districts of the Province and the Provisional County of Haliburton.	Sections 9 and 10 give to stipendiary magistrates the powers of a county court judge, as they exist or may be extended. This should be limited, as powers might be extended beyond what would be convenient to allow to local officials. Sec. 10 repeals sees. 17, 29 and 80, chap. 128 Consolidated Statutes, U. C., which relate to criminal law. Sec. 9 applies sees. 48, 105, 181 and 184 of act relating to division courts, which sections form part of criminal law.	153
Chap. 66.	An Act to incorporate the Standard Fire Insurance Company.	Section 18 does not definitely limit the business of the company to the province.	157



TABLE OF ACTS, 1867-1895—*Continued.*ONTARIO—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
42 Vict., 1879, chap. 13.	An Act respecting Grand Juries . . .	Question as to legislative authority of provincial legislature over the constitution of grand jury in criminal matters, is to be submitted to supreme court.	160
Chap. 31. . . .	An Act to amend the Municipal Law. . .	Some of provisions relate to vexed question of licenses, and that provisions interfere with power of Dominion Parliament over regulation of trade and commerce.	161
Chap. 84. . .	An Act to incorporate the Prudential Life Assurance Company of Ontario.	Doubt as to power of provincial legislature to incorporate a life insurance company.	161
43 Vict., 1880, chap. 10.	An Act to abolish priority of and amongst Execution Creditors.	Entrenches upon subject of bankruptcy and insolvency.	170
44 Vict., 1881, chap. 5.	An Act to consolidate the Superior Courts, establish a uniform system of pleading and practice, and make further provisions for the due administration of justice.	Power of local legislature to pass certain provisions contained in Act doubtful and provisions appear to be <i>ultra vires</i> , viz.: assuming to constitute courts; to appoint judges; to limit appeals to supreme court; and to commute fees to surrogate judges.	185
Chap. 27. . . .	An Act to give increased efficiency to the Laws against Illicit Selling.	Some provisions may be held <i>ultra vires</i> , as interference with regulation of trade and commerce.	187
Chap. 38. . . .	An Act to close part of a certain Road allowance between the Township of Kingston and the Village of Portsmouth.	Objection taken by petition as to power of provincial legislature to provide for closing up of the road. Minister of Justice of opinion that legislature possessed this power.	187
Chap. 57. . .	An Act to amend the Acts incorporating the Toronto Gravel Road and Concrete Company.	Application made by company and by property holders that interests prejudicially affected by provisions of Act, but Act left to its operation.	187
45 Vict., 1882, chap. 10.	An Act for the removal of certain defects in the Law of Evidence.	Provision that parties to any proceeding instituted in consequence of adultery, and husbands and wives of such parties, shall be competent to give evidence, should be limited to civil proceedings.	188
Chap. 12. . . .	An Act respecting the restitution of Stolen Goods.	Prosecutor or person claiming property may apply to judge, to have right of prisoner and of claimant summarily tried, as judge would probably have to find prisoner guilty before ordering restitution. Authority of legislature to pass Act not free from doubt.	188
Chap. 17. . .	An Act to confer additional powers upon Joint Stock Companies.	Deals with question of interest. Sec. 13 enacts that offender shall be civilly and criminally liable for offence.	189
Chap. 23. . .	An Act to amend the Municipal Act . .	Provisions conflict with powers of parliament to legislate respecting regulation of trade and commerce.	189
Chap. 39. . .	An Act to consolidate the Debtors' debt of the Town of Owen Sound.	Deals with question of interest. . . . .	189

TABLE OF ACTS, 1867-1895—*Continued.*ONTARIO—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
45 Vict., 1882, chap. 41.	An Act to enable the Corporation of the Town of Port Hope to incur liability for the construction and extension of Water Works and for other purposes.	Deals with question of interest.....	189
Chap. 48....	An Act to consolidate the General Debenture Debt of the Village of Yorkville.	do do .....	89
Chap. 50....	An Act to incorporate the Galt Junction Railway.	Deals with question of interest and also with that of aliens.	1 9
Chap. 52....	An Act to incorporate the London Junction Railway Company.	Deals with question of aliens.....	189
Chap. 53....	An Act respecting the Debenture Debt of the London and Port Stanley Railway Company.	Deals with question of interest.....	189
Chap. 57....	An Act to incorporate the Mississippi Valley Railway Company.	Deals with question of aliens.....	189
Chap. 58....	An Act to incorporate the Northern and North-western Junction Railway Company.	do do .....	189
Chap. 60....	An Act to incorporate the Prescott and Glengary County Junction Railway Company.	do do .....	189
Chap. 67....	An Act to consolidate the Toronto and Nipissing Railway Company, the Whitby, Port Perry and Lindsay Railway Company, the Victoria Railway Company, the Toronto and Ottawa Railway Company, the Grand Junction Railway Company, and the Midland Railway of Canada.	do do .....	189
Chap. 69....	An Act to incorporate the Western Counties Railway Company.	do do .....	189
Chap. 71....	An Act to authorize the Gananoque Water Power Company to issue debentures.	Deals with question of interest.....	189
Chap. 87....	An Act respecting St. Paul's Church in the Town of Woodstock.	Act was passed while matter was under consideration of the court, and because it is <i>ex post facto</i> in its operation, in the preamble of the Act.	190
46 Vict., 1882-83, chap. 48.	An Act to consolidate the Act relating to Municipal Institutions.	Doubtful if legislature has not exceeded its powers in passing provisions relating to harbours, to public morals, and powers of council to pass by-laws.	193
47 Vict., 1884, chap. 32.	The Municipal Amendment Act, 1884.	Provision relating to authority granted to municipal corporations to pass by-laws relating to removal of sunken or wrecked vessels or other obstructions, is one to be exercised by parliament of Canada, not by provincial legislature.	196
Chap. 34....	An Act to amend the Liquor License Laws.	Question of relative powers of parliament and legislature over this subject is still unsettled.	196

TABLE OF ACTS, 1867-1895—*Continued.*ONTARIO—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
48 Vict., 1885, chap. 5.	An Act in respect of certain sums of money ordered by the Legislative Assembly to be impounded in the hands of the Speaker.	Act objected to as being a direct interference with rights of garnishees of the money, but Act held to be within legislative authority of legislatures.	198
Chap. 9. . . .	An Act to regulate the Fisheries of this Province.	Administration of Act may possibly lead to some conflict with the administration of Fishery Act of the Dominion.	198
Chap. 13. . . .	An Act for further improving the Administration of the Law.	Judge of high court of justice or of county court cannot be appointed by provincial statute, nor can legislature confer upon any person the powers of a judge.	199
Chap. 26. . . .	An Act respecting assignments for the benefit of creditors.	Act is one respecting the administration of estates of insolvent persons.	199
Chap. 29. . . .	An Act respecting Wages . . . . .	Validity of provision relating to assignments by a person in insolvent circumstances depends on validity of preceding Act (chap. 26).	199
49 Vict., 1886, chap. 16.	An Act for further improving the Law.	Objection taken to Act on ground that provisions of sec. 59, subsec. (b), are so enacted as to found an argument before high court that Act gives power to relieve against penalties, to one-half of which Dominion government are entitled, and if so, this provision is <i>ultra vires</i> . Act left to its operation, as it was believed that provision in question only applied to matters within jurisdiction of provincial legislature.	202
50 Vict., 1887, chap. 2.	An Act respecting the Revised Statutes of Ontario.	No opinion expressed that all the provisions of revised statutes are within legislative authority of the provincial legislature.	204
Chap. 8. . . .	An Act to give early effect to certain Amendments of the Law recommended by the Statute Commissioners.	Act assumes that, though appointment of judges is vested in Governor General, and that the only limitation is that they must be selected from their respective bars, a provincial legislature has power to limit such choice by provisions and qualifications.	204
Chap. 19. . . .	An Act to make further provisions respecting Assignments for the benefit of Creditors.	Legislation of this character in respect of insolvency is possibly beyond constitutional authority of legislature.	205
Chap. 36. . . .	An Act for the Protection of Infant Children.	Secs. 6 and 12 is legislation in respect to the criminal law and is unnecessary and confusing, considering provisions of chap. 165, sec. 46, of Revised Statutes, Canada.	205
Chap. 45. . . .	An Act for the Protection of Women in certain cases.	Provisions of Act approach more nearly to criminal law than to police regulations.	205
Chap. 76. . . .	An Act to incorporate the Fort Erie Ferry Company.	Purports to grant powers to company to erect obstructions upon navigable waters, and Act assumes to legislate respecting aliens.	205
Chap. 79. . . .	An Act to incorporate the Ottawa and Thousand Island Railway Company.	do do do . .	205
Chap. 81. . . .	An Act to incorporate the Southern Central Railway Company.	do do do . .	205



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51 Vict., 1888, chap. 2.	An Act respecting the Revised Statutes of Ontario, 1887.	See remarks on chap. 2 of 1887, ante page 204 and also page 210. Provisions are within competence of provincial legislature, provided that provisions of revised statutes are within competence of provincial legislature.	210
Chap. 5.....	An Act respecting the Executive Administration of the Laws of this Province.		206
Chap. 7.....	An Act to give certain powers to the Commissioners of the Queen Victoria Niagara Falls Park.	Sec. 5 gives power to commissioners to expropriate land over which the legislature of Ontario has any legislative control.	211
Chap. 14....	An Act respecting Manitoulin.....	Doubts entertained as to validity of legislation and as to powers of legislature to pass legislation respecting magistrates.	211
Chap. 28....	The Municipal Amendment Act, 1888.	Legislation may be an infringement upon exclusive power of Canadian parliament to legislate in respect of trade and commerce.	212
Chap. 29....	The Assessment Amendment Act, 1888.	Assumes to deal with question of interest.	212
Chap. 32....	An Act to provide against frauds in the supplying of Milk to Cheese or Butter Manufactories.	Act held <i>ultra vires</i> of provincial legislature in Reg. vs. Wason, 170 R. (Q.B.D.) 58 and 17, App. Reports, 221.	212
Chap. 70. . .	An Act to incorporate the Manitoulin and North Shore Railway Company.	Provisions authorizing erection of structures, such as wharfs, &c., in navigable waters, or waters under federal control, objectionable. Sec. 12 assumes to deal with subject of aliens, and sec. 25 with subject of bills and notes.	212
Chap. 71. . .	An Act to incorporate the Ottawa, Arnprior and Renfrew Railway.	Sec. 5, without limitation, would be an infringement on power of Dominion parliament to legislate as to shipping and navigation. Assumes also to deal with subjects of aliens and negotiable instruments.	212
Chap. 74....	An Act to incorporate the Peterboro' and Chemung Lake Railway Company.	Secs. 11 and 16 objectionable, as they deal with subjects of erections in navigable waters, and with negotiable instruments.	213
Chap. 75....	An Act to amend the Act incorporating the Parry Sound Colonization Railway Company.	Sec. 2 authorizes company to enter into arrangements with railway companies that are under jurisdiction of parliament of Canada, and to connect with one of the railways under that jurisdiction. This arrangement only valid when authorized by parliament of Canada.	213
Chap. 79....	An Act to incorporate the Central Canada Exhibition Association.	Act bears internal evidence that it is not a provincial or local association only. It would appear that association is not one which provincial legislature has power to incorporate.	213
52 Vict., 1889, chap. 10	An Act respecting the Administration of Justice in certain cases.	Act purports to give the Lieutenant-Governor power to appoint a police magistrate.	215

TABLE OF ACTS, 1867-1895—*Continued.*ONTARIO—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
52 Vict., 1889, chap. 15.	An Act respecting appeals on prosecutions to enforce penalties and punish offences under provincial Acts.	Sec. 4 objectionable. Though intended to apply to offences punishable by indictment, where alone demurrer is possible, it is wide enough to cover proceeding by summary conviction, where there is no demurrer. Provision <i>ultra vires</i> , because of provincial Act creating offence and a penalty. Is an attempt to limit the power of the courts to adjudicate upon constitutionality of provincial legislation.	215
Chap. 78....	An Act to incorporate the Amherstburg, Lake Shore and Blenheim Railway.	Provisions made in these Acts relating to promissory notes and bills of exchange may be invalid.	216
Chap. 82....	An Act to incorporate the Toronto Belt Line Railway Company.		
Chap. 84....	An Act to incorporate the Waterloo Junction Railway Company.		
53 Vict., 1890, chap. 69.	An Act to amend the Ditches and Watercourses Act, as applied to Railways.	Act is made to apply to all railways in the province. As far as Act applies to railways within legislative jurisdiction of Canada, it is of no effect.	218
55 Vict., 1892, chap. 8.	An Act to confirm a certain Agreement made between the Commissioners of the Queen Victoria Niagara Falls Park and the Canadian Niagara Power Company, and to enable the Company to carry the Agreement into practical effect.	Open to objection that statute interferes with vested rights of property and the obligation of contract, without providing for compensation.	238
Chap. 10....	An Act for the Protection of the Provincial Fisheries.	Secs. 5, 7, 8, 9, 12 and 13 are infringements upon exclusive right of federal parliament to legislate on subject of sea coast and inland fisheries. Pending settlement of question of provincial fisheries jurisdiction, Act left to operation.	239
Chap. 42....	An Act to consolidate the Act respecting Municipal Institutions.	Doubtful if powers conferred by Act upon municipal institutions in respect to power of passing by-laws, are within legislative competence.	240
56 Vict., 1893, chap. 33.	An Act for the better prevention of Fraudulent Statements by Companies and others.	Trenches on subject of criminal law	241
Chap. 45....	An Act for the prevention of Cruelty to and better Protection of Children.	do do do	242
Chap. 48....	An Act to prevent Fraud in the Sale of Milk.	do do do	242
Chap. 49....	An Act to amend and consolidate the Laws for the Protection of Game and Fur-bearing Animals.	Sec. 6, by preventing exportation of game from the province, trenches on subject of trade and commerce.	242
Chap. 93....	An Act to incorporate the Lake Superior and Algoma Colonization Railway.	Sec. 5 can only have effect as regards rivers and harbours and foreshores thereof, subject to legislation of parliament regarding such.	242

TABLE OF ACTS, 1867-1895—*Continued.*ONTARIO—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
57 Vict., 1894, chap. 97.	An Act to incorporate the Georgian Bay Ship Canal and Power Aqueduct Company.	Provincial legislature cannot authorize a company to divert or appropriate rivers, which under the British North America Act, became part of the public property of Canada.	243.
Chap. 98....	An Act to incorporate the Ontario Burglary Insurance Company (Limited).	Authority conferred by Act to carry on business is general, and not expressly limited to provincial purposes. Power conferred on provincial legislature with regard to companies is, by British North America Act, limited to companies with provincial objects.	244
58 Vict., 1895, chap. 12.	An Act to consolidate the Acts governing the Supreme Court of Judicature of Ontario.	Attention called to secs. 131, 139, 153, 180, 182, 183 and 184 of chap. 12 and sec. 40 of chap. 13. These provide for payment of fees by litigants by law stamps which go to consolidated revenue fund of province. Such is not direct taxation and therefore doubtful if province has power to raise special fund in this manner. Sec. 8 purports to fix precedence of chief justices and justices of court of appeal and high court of justice. Authority of province to enact these provisions is doubtful.	244c
Chap. 13	An Act diminishing Appeals and otherwise improving the procedure of the Courts.		
Chap. 32	An Act respecting chartering of Trust Companies.	Provisions of Act not only authorizes Lieutenant-Governor in Council to confer by letters patent upon companies by parliament of Canada, the powers set forth in letters patent granted by Lieutenant-Governor, but by implication declares that no company so incorporated shall exercise within Ontario the powers conferred by its charter, unless authorized so to do by letters patent from the Lieutenant-Governor in Council, so that Act practically prohibits any company chartered by parliament of Canada from exercising powers mentioned in schedule, from transacting business in Ontario, unless authorized by provincial letters patent.	244d
Chap. 38	An Act respecting Electric Railways		
Chap. 67	An Act respecting By-laws Nos. 680 and 772 of City of Hamilton.		
Chap. 97	An Act to incorporate the Grand Valley Railway Company.	Contains sections declaring in effect that aliens may be shareholders and office holders in such companies with same rights as British subjects. Exclusive legislative authority respecting aliens committed to Dominion parliament, so it is beyond authority of provincial legislature to legislate so as to effect their rights.	244b
Chap. 115	An Act to incorporate the Windsor, Amherstburg and Lake Erie Railway Company.		
Chap. 118	An Act to incorporate the Sault Ste. Marie Pulp and Paper Company.		



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Act.	Title.	Reasons for Objection or Comment.	Page.
58 Vict., 1895, chap. 38.	An Act respecting Electric Railways.	Secs. 128 and 129 authorize construction of swing or draw-bridges, wharfs, piers, bridges, &c., over navigable river or canal. Sections may be construed to vest corporate powers in companies to execute works of character as above. Powers could not be exercised lawfully without proceedings required by parliament, in respect to construction of works over navigable rivers.	244c
Chap. 48...	An Act for the prevention of Fraud in the sale of Fruit.	Constitutes offences and establishes penalties in respect to fraud in packing and sale of fruit. Relates rather to subject of criminal law than any matter of legislation committed to the province.	244c
Chap. 116...	An Act to incorporate the Algoma Dry Dock Company.	Sec. 2 subject to observations made with regard to secs. 128 and 129 of chap. 38. Subject to further remark, so far as harbours or basins are concerned, that public harbours are, by the British North America Act, part of public property of Canada, and therefore not subject to provincial legislation.	244c

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31 Vict., 1868, chap. 14.	An Act to continue for a limited time the several Acts therein mentioned.	Sec. 2 legislates on subject of bankruptcy.	245
Chap. 24...	The Joint Stock Companies' General Clauses Act.	Powers of companies to be established under this Act should be limited to the province. Subsec. 8 of sec. 2 legislates upon subject of fisheries.	246
Chap. 25...	An Act respecting the Incorporation of Joint Stock Companies.	Sec. 2—the same remarks that are made on chap. 24 apply to this Act.	246
Chap. 37...	An Act to amend the Acts relating to the City of Montreal, and for other purposes.	Sec. 14 should be limited to proceedings in recorders' courts, as criminal proceedings belong to federal parliament.	246
Chap. 46...	An Act to incorporate the Chambly Hydraulic and Manufacturing Company.	Authorizes obstruction of River Richelieu, a navigable stream.	253
Chap. 47...	An Act to incorporate the Canada Marine Insurance Company.	Sec. 2 authorizes insurance of risks beyond limits of province. Local legislatures can only incorporate companies with provincial objects.	253
33 Vict., 1869-70, chap. 5.	An Act to uphold the Authority and Dignity of the Houses of the Quebec Legislature and the Independence of the Members thereof, and to protect persons publishing Parliamentary Papers.	Doubt expressed as to competence of local legislature to pass this Act, for reasons similar to those expressed with reference to Act chap. 4 of 32 Victoria, 1869. (See pp. 254, 255.)	256

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Act.	Title.	Reasons for Objection or Comment.	Page.
34 Vict., 1870, chap. 2.	An Act to consolidate and amend the Law respecting Licenses, and the duties and obligations of persons bound to hold the same.	Doubt expressed whether these Acts are not, in some respects, <i>ultra vires</i> , and possibly interfering with trade and commerce.	257
Chap. 68, . . .	The Municipal Code of the Province of Quebec.		
Chap. 36, . . .	An Act to amend the Act 20 Victoria, chap. 125, intituled: "An Act to divide the Quebec Turnpike Roads into Two Separate Trusts, and to make other provisions relative thereto."	Act is local and private, affecting assets belonging to Quebec and Ontario jointly. Notice should have been given in <i>Quebec Gazette</i> , according to parliamentary practice in that province.	257
26 Vict., 1872, chap. 52.	An Act to incorporate the Town of Nicolet.	Deals with criminal law, inasmuch as provision is therein made for the summary conviction of parties guilty of assault on a constable or police officer.	259
Chap. 53, . . .	An Act to incorporate the Corporation of the Town of Lachine.		
Chap. 59, . . .	An Act to amend the Act 23 Victoria, chap. 76, intituled: "An Act to incorporate the Village of Terrebonne as a Town."		
37 Vict., 1873-74, chap. 8.	An Act to amend the Acts respecting District Magistrates and Magistrates' Courts in this Province.	Grave doubts entertained as to constitutionality of Act, which has already been questioned before some courts of justice, but Act allowed to go into operation.	260
Chap. 55, . . .	An Act to incorporate the Ottawa Iron and Steel Manufacturing Company (Limited).	Powers granted by sec. 4 are such that their effect might be to interfere with navigation, and therefore are <i>ultra vires</i> .	260
38 Vict., 1874-75, chap. 4.	An Act to encourage the manufacture of Sugar from Beet-Root in the Province of Quebec.	Provisions might nullify or impair the fiscal policy of Canada, and question whether such legislation should be allowed.	261
Chap. 7, . . .	An Act respecting the Election of Members of the Legislative Assembly of the Province of Quebec.	Secs. 1 and 3 use the term "parliamentary" electors, which is objectionable, also sec. 64. Secs. 56, 57, 218, 235, 238, 258, 290 and 291 trench upon the criminal law.	261
Chap. 47, . . .	An Act to divide the Registration Division of Montreal into three Registration Divisions.	Act was petitioned against as depriving Mr. G. H. Ryland, the registrar, of emoluments guaranteed him by the imperial government. Lieutenant-Governors assurance that Mr. Ryland's interests would be protected, was accepted.	268
Chap. 28, . . .	An Act to amend the Act concerning the creation and division of Parishes and the holding of Churches, Parsonage Houses, &c.	Act alters some provisions of Consolidated Statutes for Lower Canada, chap. 18, respecting procedure for elections and division of parishes, &c.	278
Chap. 29, . . .	An Act to amend Chapter 180 of the Consolidated Statutes of Lower Canada.	Inconvenience which might arise from a departure in particular cases from the general and well-known satisfactory system prescribed by the statute.	278
Chap. 76, . . .	An Act to amend and consolidate the Act of Incorporation of the City of Three Rivers and the various Acts relating to the same.	Sec. 79, subsec. 4, trenches upon the provisions of the criminal law.	263

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Act.	Title.	Reasons for Objection or Comment.	Page.
38 Vict., 1874-75, chap. 78.	An Act to amend the Act 38 Vict., Chap. 53, intituled: "An Act to incorporate the Corporation of the Town of La- chine."	Some of the provisions of sec. 27 are <i>ultra vires</i> .	263
Chap. 79....	An Act to incorporate the City of Hull.	Sec. 91, empowering council of Hull to make by-laws relating to ferries between Hull and Ottawa is <i>ultra vires</i> . Sec. 130 trenches upon provisions of criminal law and is similar to sec. 54, chap. 52, of 36 Vict., already objected to. Secs. 166, 219, 220 and 221 deal with the criminal law.	263.
Chap. 81....	An Act to incorporate the Atlantic Insurance Company of Montreal.	Business authorized by the Act to be done is not strictly confined to the province, an objection already made to insurance companies similarly incorporated.	263
Chap. 89....	An Act to incorporate the Sherbrooke Gas Company.	Secs. 15, 18 and 19 appear to come within the criminal law, being provided for in the Act relating to malicious injuries to property.	264
Chap. 98....	An Act to authorize George Benson Hall to make improvements in the River Chaudière and exact tolls for the use thereof.	Provisions granting powers to make booms and piers in tidal and navigable rivers might tend to interfere with navigation.	264
39 Vict., 1875, chap. 2.	An Act respecting the construction of the Quebec, Montreal and Occidental Railway.	Questionable if authority given by sec. 22 is not more extensive than can properly be given by provincial legislature. Sec. 43 invests the railway with all rights, franchises, &c., granted by the parliament of Canada, which local legislature cannot affect.	281
Chap. 5....	An Act to amend the Act 38 Vict., Chap. 4, respecting the manufacture of Sugar from Beet-Root.	Provisions might nullify or impair the fiscal policy of Canada, and question whether such legislation should be allowed.	281
Chap. 6....	An Act further to amend the Quebec License Act (31 Vict., Chap. 2) and the several Acts amending the same, and to extend the application thereof.	Act contains provisions open to the same questions as has been already stated to be <i>sub judice</i> , as to the competency of the local legislature to affect trade and commerce by such legislation.	282
Chap. 7....	An Act to compel Assurers to take out a License.	The imposition of a tax of 1 per cent on renewals of life assurance contracted for at a specified premium before the passing of this Act is unfair to the company.	287
Chap. 20....	An Act respecting the compilation of Statistics of Births, Marriages and causes of Death in this Province.	Act deals with subject of statistics, but similar legislation has been suffered to go into operation in other provinces.	282
Chap. 33....	An Act to amend and consolidate the various Acts respecting the Notarial Profession in this Province.	Sec. 7 makes an assault upon a notary a misdemeanour, and thus trenches upon criminal law.	282
Chap. 41....	An Act to annex certain portions of the Township of Shawinigan, in the County of St. Maurice, to the Parish of St. Flore, in the County of Champlain, for School, Municipal and Registration purposes, and for the purposes of Parliamentary Representation.	The use of the term "parliamentary" again objected to. (See report on chap. 7 of previous session.) The same objection applies to chap. 42 with reference to county of Lotbinière, and to chap. 43 with reference to Bellechasse.	282



TABLE OF ACTS, 1867-1895—*Continued.*QUEBEC—*Continued.*

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39 Vict., 1875, chap. 50.	An Act to incorporate the City of Sherbrooke.	Sec. 33, subsec. 4, appears to trench upon the criminal law. Sec. 43 provides for punishing an offence within sec. 110 of the Larceny Act, and therefore deals with criminal procedure.	283
Chap. 56.	An Act to amend the Act incorporating the Montreal, Portland and Boston Railway Company.	This company, formerly the "Montreal, Chambly and Sorel Railway Co.," was declared by Act of Canada, 36 Vic., chap. 87, 1873, to be a work for the general advantage of Canada and therefore by sec. 92 of the British North America Act, the powers of the local legislature could not extend to it.	283
Chap. 60.	An Act to incorporate the Patriotic Insurance Company of Canada.	Sec. 7 does not limit the operations of the company, an objection already made to chap. 81 of the preceding section. Secs. 27 and 28 trench upon the criminal law.	284 291 292
Chap. 62.	An Act to change the name of the Provincial Permanent Building Society to that of the Provincial Loan Company, and to extend the powers thereof.	Secs. 9 and 11 appear to interfere with the law of interest, and therefore <i>ultra vires</i> . The 11th sec. of chap. 63, a similar enactment, is open to the same objection.	284
Chap. 64.	An Act respecting a Company incorporated under the name of "Le Credit Foncier du Bas Canada."	This company was already incorporated under chap. 102, 36 Vic., Canada, and it seems objectionable that a provincial legislature should regrant powers to a Canadian company.	284
Chap. 66.	An Act to authorize the Victor Hudon Cotton Company, Hochelaga, to issue debentures on the security of the property of the said Company, and for other purposes.	Sec. 2, subsec. 4, interferes with the law of interest.	285
Chap. 76.	An Act to incorporate the musical band of the Village of Lauzon.	This Act empowers the association to impose a fine or imprisonment in certain cases, a power which it is extremely inconvenient to confer upon such a corporation as this.	285
Chap. 36.	An Act for the civil erection of several parishes cut off from the territory of the old parish of Notre Dame of Montreal.	This Act departs from the practice under chap. 18, Consolidated Statutes of Lower Canada, and ratifies in advance any decrees which may be made by the local ecclesiastical authority.	289
Chap. 35.	An Act to amend an Act of this Province, 38 Vic., Chap. 29.	The remarks upon chap. 36 apply to this Act.	291
41 Vict., 1878, chap. 3.	An Act to amend and consolidate the Quebec License Act and its amendments.	Some of the provisions of this Act were thought to be <i>ultra vires</i> , but being questions susceptible of settlement by the courts, it was allowed to go into operation.	294
Chap. 25.	An Act to define and regulate the limit of certain municipalities and parishes in the Counties of Nicolet, Arthabaska and Drummond, and to include in the County of Nicolet the portions of these municipalities and parishes not now included therein.	Section 11 deals with the rights of voters at federal elections, and is in that particular, inoperative.	295

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Act.	Title.	Reasons for Objection or Comment.	Page.
42-43 Vict., 1879, chap. 58.	An Act to consolidate and amend the Act incorporating the Town of St. Henri.	Section 15, subsec. 7 and 8, appear to trench upon the regulation of trade and commerce, but as the whole question is before the Supreme Court, <i>in re Jones vs. Gilbert</i> , no interference is recommended.	296
Chap. 60....	An Act to amend the Act incorporating the City of Sherbrooke. (39 Vict., Chap. 50.)	Section 9 deals with the subject of interest, which by the British North America Act, is placed within exclusive legislative control of the parliament of Canada.	296
44-45 Vict., 1881, chap. 46.	An Act respecting the Laval University, and for the purpose of increasing the number of its Chairs of Arts and other faculties within the limits of the Province of Quebec.	Act petitioned against on several grounds, but upon examination was found to be within powers conferred upon the Quebec legislature, by British North America Act.	304
Chap. 69....	An Act to incorporate the Canadian Electric Light Company.	Section 20 imposes penalty for damaging or injuring works or apparatus of the company, whereas by Act of parliament of Canada, the offence created by part of section is made a misdemeanour, so that there is conflict of laws.	304
Chap. 72....	An Act to incorporate the Quebec and Lévis Telephone Company.	By sec. 9 some conflict of laws is created as in chap. 69.	304
45 Vict., 1882, chap. 4.	An Act to facilitate the intervention of the Crown in civil cases in which the constitutionality of federal or provincial Acts is in question.	Section 1 provides that question of constitutionality of Dominion or provincial Acts shall not be raised, unless party shows to the court that notice has been given to the Attorney General (with grounds alleged) eight days before day appointed for hearing. Sec. 1 objectionable so far as it deals with Acts of parliament.	306
Chap. 9....	An Act to amend the Quebec License Law of 1878. (41 Vict., chap. 3.)	Act is <i>ultra vires</i> of provincial legislature.	306
Chap. 22....	An Act to impose certain Direct Taxes on certain commercial corporations.	Alleged to be <i>ultra vires</i> of provincial legislature.	307
Chap. 35....	An Act to further amend the Municipal Code of the Province of Quebec.	To apply provisions of law set out in sec. 2 to federal government railways is beyond power of provincial legislature.	307
Chap. 103...	An Act to incorporate the Town of Richmond.	Power given by sec. 23, subsec. 12 to town council, to make by-laws to regulate or prohibit sale of intoxicants within limits of town, is <i>ultra vires</i> .	307
46 Vict., 1883, chap. 55.	An Act to confirm the Act of the Federal Parliament, intituled: "An Act to amend and extend the Acts to empower the Stadacona Fire and Life Insurance Company to relinquish their charter, and to provide for the winding up of their affairs."	Act passed owing to doubts as to authority of parliament to make provision, that in winding up of companies, proceedings for recovery of claims must be made within one year. Act unnecessary, as parliament having authority to legislate for winding up a company, by reason of bankruptcy, would have power to enact provisions mentioned.	308 308
Chap. 76....	An Act to incorporate the Citizens Gas Company of Montreal	Sections 25, 26 and 29 trench upon the subject of criminal law.	308

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Act.	Title.	Reasons for Objection or Comment.	Page.
47 Vict., 1884, chap. 77.	An Act to authorize the Government of Quebec to take possession of a certain Toll Bridge over the River Richelieu.	Act petitioned against on grounds of invasion of right and dispossession of property secured by solemn compact of Lower Canada legislature. Deprives petitioners of property without providing for payment of value thereof; also takes away their recourse to legal tribunals of the country. Act considered within competence of the legislature.	309.
Chap. 87.	An Act to further amend the Act 27 Victoria, chap. 23. and the Act 39 Victoria, chap. 47.	Sec. 15, subsecs. 4 to 7, and secs. 16 and 17 trench upon the power of parliament to legislate with respect to criminal law.	310.
Chap. 90.	An Act to incorporate the Town of Ste. Cécile.	Sections 56, 65 and 66 trench upon subjects of criminal law.	311
48 Vict., 1885, chap. 10.	An Act respecting Escheats and Property Confiscated to the Crown.	Question as to whether the Crown, in right of the Dominion or province, is entitled to escheat of personal property, is before courts for decision. Amendment of Act desired, so as to limit application to property, which escheats to Crown in right of province.	312
Chap. 22.	An Act to amend the Code of Civil Procedure in so far as it concerns abandonment of property.	Provision made for the administration of estates of insolvent persons in same way as in the Ontario Act (48 Victoria, chap. 26). Doubtful if Act is within competence of provincial legislature.	312
Chap. 32.	An Act to protect the life and health of persons employed in Factories.	Act makes similar provision to those made by Ontario Act (47 Victoria, chap. 39). Request there made for reference to supreme court to determine power of Ontario legislature to enact the Act.	312
49-50 Vict., 1886, chap. 31.	An Act respecting the Bar of the Province of Quebec.	Sec. 16 gives bâtonnier precedence over other members of the bar. As decision in <i>Lenoir vs. Ritchie</i> should be respected and accepted as authoritative enunciation of the law on the subject of granting of precedence, a legislature cannot exercise directly a power which it cannot enable the Lieutenant-Governor to exercise.	313-337
Chap. 39.	An Act to authorize certain corporations and institutions to lend and invest moneys in this Province.	Prevents operation (within the province) of companies duly incorporated by parliament without compliance with restrictions which the legislature has no power to impose.	314-339
Chap. 49.	An Act to amend the Act of this Province, 15 Victoria, chap. 103, respecting the Town of Richmond.	Powers granted to town council to restrain and regulate sale of spirituous liquors and to prohibit sales is probably, under the decisions, in excess of the powers of the legislature.	314
51-52 Vict., 1888, chap. 9.	An Act respecting the redemption of Provincial Debentures and the conversion of the Debt.	Sec. 5 purports to give authority to the executive council to violate contracts between the province, and holders of provincial debentures, without payment of compensation therefor. Legislation of this character prejudicially affects the credit of the province.	376



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51-52 Vict., 1888, chap. 13.	An Act relating to the question of the settlement of the Jesuit Estates.	<i>See</i> page 386-429.	
Chap. 17....	An act to amend and consolidate the Laws relating to Fisheries.	Act appears to be an infringement upon property and powers of the Dominion government respecting sea coast and inland fisheries.	378
Chap. 30....	An Act to amend the Municipal Code.	Sec. 11 is legislation affecting the criminal law, and is expressly at variance with sec. 29, chap. 162, Revised Statutes of Canada.	378
Chap. 73....	An Act to incorporate the Chambly Manufacturing Company.	Professes to give the company absolute rights in respect to River Richelieu, thus dealing with subject wholly within the powers of the Canadian parliament.	378
Chap. 75....	An Act to amend the Charter of the Windsor and Brompton Bridge Company.	Original Act incorporated a company for the purpose of erecting a toll bridge over River St. Francis, thus interfering with its navigation, is beyond the powers of the provincial legislature.	379
Chap. 76....	An Act to incorporate the Ste. Clothilde de Horton Bridge Company.	Similar observations, so far as the powers of the provincial legislature are concerned, apply to this Act as to chap. 75.	379
Chap. 83....	An Act to amend and consolidate the Acts incorporating the Town and City of St. Hyacinthe and the Acts amending the same, and to confer further powers upon the Mayor and Council of the City of St. Hyacinthe.	Contain provisions more or less beyond the competency of a provincial legislature to pass, as trenching on the subjects of navigation and shipping, criminal law, interprovincial railways, and railways for the general advantage of Canada.	380
Chap. 87....	An Act to amend the Act incorporating the Town of St. Henri.		
Chap. 88....	An Act to incorporate the Town of Drummondville.		
Chap. 90....	An Act to erect the Town of Coaticook into a Town with a Special Charter.		
Chap. 99....	An Act to incorporate the Napierville Junction Railway Company.	Contain provisions permitting aliens to have equal rights with British subjects in railway stock. Infringes on exclusive right of Dominion parliament to legislate on subject of aliens.	381
Chap. 101....	An Act to incorporate the Portage-du-Fort and Bristol Branch Railway Company.		
Chap. 107....	An Act to incorporate the Philipsburgh Junction Railway and Quarry Company.		
Chap. 103....	An Act to incorporate the St. Maurice Railway Company.	Section 15 beyond competence of provincial legislature, as dealing with subject of bills of exchange and promissory notes.	382
52 Vict., 1889, chap. 12.	An Act respecting the executive administration of the laws of this province.	Act beyond competence of provincial legislature.	432
Chap. 18....	An Act to amend the law respecting fishing in this province.	Doubtful as to rights of provincial legislature to pass any enactment dealing with the fisheries, whether in inland waters or elsewhere.	433
Chap. 41....	An Act to amend the law respecting land surveyors and the survey of lands.	Provisions prescribing conditions necessary before any one can act as land surveyor in Quebec, and attaching penalties to any one acting who has not conformed thereto, are <i>ultra vires</i> , so far as they are inconsistent with Dominion Lands Act.	433

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Act.	Title.	Reasons for Objection or Comment.	Page.
52 Vict., 1889, chap. 76.	An Act to incorporate the Bel Air Jockey Club.	Sections 10 and 11 trench upon the subject of the criminal law.	434
Chap. 77....	An Act to incorporate the St. Lawrence Improvement Company.	Contain certain provisions in regard to promissory notes and bills of exchange which may be invalid.	434 435
Chap. 89....	An Act to incorporate the Lotbinière and Megantic Railway Company.		
Chap. 90....	An Act to incorporate the Lake St. Francis Railway and Navigation Company.		
Chap. 91....	An Act to incorporate the Peninsula and Gaspé Short Line Railway Company.		
Chap. 92....	An Act to incorporate the Eastern Railway Company.		
Chap. 93....	An Act to incorporate the Matane Railway Company.	Provisions relating to taxation, to make by-laws, fines and remission of fines. Appointment of recorder and his qualifications, open to questions as being <i>ultra vires</i> of provincial legislature.	435
Chap. 79....	An Act to revise and consolidate the charter of the City of Montreal and the several Acts amending the same.		
Chap. 80....	An Act to incorporate the City of Sorel.	do do Sections authorizing opening, &c, of ice roads, taking of ice from rivers, and establishment of fences, open to question, as interference with rights of parliament respecting navigable rivers, and rights of Dominion in relation to those rivers.	435
53 Vict., 1890, chap. 70.	An Act to incorporate the City of Ste. Cunegonde, Montreal.	Objectionable, as large powers of enacting by-laws vested in the council of these corporations, is open to question. Infringe more or less upon subjects exclusively assigned to the federal parliament.	437
Chap. 71. . .	An Act to consolidate the Acts respecting the corporation of the Town of St. Johns.		
Chap. 72....	An Act to amend and consolidate the Acts of incorporation of the Town of Terrebonne.		
Chap. 73 . . .	An Act to incorporate the Town of Acton.		
Chap. 74 . . .	An Act to incorporate the Town of Buckingham.		
Chap. 75. . .	An Act to incorporate the Town of Côte St. Louis.		
Chap. 76 . . .	An Act to incorporate the Town of Côte St. Antoine.		
Chap. 77 . . .	An Act to incorporate Town of Bedford.		
Chap. 78. . .	An Act to incorporate the Town of Victoriaville, and to erect the municipality of the parish of St. Victor d'Arthabaska.		
Chap. 79 . . .	An Act to incorporate the Town of Magog and for the better management of education within its limits.		

TABLE OF ACTS, 1867-1895—*Continued.*QUEBEC—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
54 Vict., 1890, chap. 15.	An Act to amend and consolidate the Mining Law.	Objected to as interfering with private rights unjustly and confiscating private property, taking away from purchasers of lands patented since 1880 the right of acquiring mines existing on their lands. Law is contrary to general interests of Canada and trade policy of the Dominion, is <i>ultra vires</i> and unconstitutional. Act should be amended making it clear that Act only applies to mines and minerals which belong to Crown, although not specially reserved.	454
Chap. 22....	An Act respecting the Court of Queen's Bench (Crown side).	In leaving Act to operation, statement contained in preamble as to insufficiency of court to perform its functions as at present constituted, not concurred in, nor that appointments provided for by the Act should be made.	455
55-56 Vict., 1892, chap. 56.	An Act to consolidate the various Acts affecting the incorporation of the Town of Iberville.	In leaving Acts to operation, power and authority which by them are conferred upon municipal institutions in respect to their power of passing by-laws, not to be understood as being within competency of provincial legislature.	459
Chap. 57....	An Act to incorporate the Town of Cookshire.		
Chap. 58....	An Act to incorporate the Town of Scotstown.		
Chap. 74....	An Act to incorporate the Quebec Exposition Company.	Section 14 deals with malicious injuries to property and trenches on subject of criminal law.	459
56 Vict., 1893, chap. 76.	An Act to incorporate the Compagnie Hypothécaire.	Sections 6, 7 and 8 appear to contemplate such a disposal of money by lot as would be illegal under sec. 205 of criminal code. Provincial legislature has no power to authorize an Act, constituted an offence by parliament.	460
57 Vict., 1894, chap. 50.	An Act respecting the early closing of shops.	Act objected to as an encroachment on powers of Dominion parliament to regulate trade and commerce, also as not having any connection with municipal institutions, nor legitimately within subjects of police regulation, but Act considered a matter entirely for provincial legislation, coming under sec. 92 of The British North America Act.	462
Chap. 57....	An Act to amend the Act 54 Vict., chap. 78, concerning the Charter of the City of Montreal.	Objected to on grounds that legislation is contrary to public interests, infringing the liberties and rights of property of citizens, but Act considered unobjectionable.	468
Chap. 59....	An Act to amend the various Acts relating to the Corporation of the City of Three Rivers.	Section 14. If provision of sec. 14 extends to railways under Dominion control, provincial legislature not competent to enact such section.	463
Chap. 63....	An Act to consolidate the Acts respecting the Corporation of the Town of Salaberry of Valleyfield.	Sections 148, 149 and 197. If provisions of these sections extend to railways under Dominion control, it is not competent for provincial legislature to enact them.	463



TABLE OF ACTS, 1867-1895—*Continued.*QUEBEC—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
57 Vict., 1894, chap. 66.	An Act to amend and consolidate the charter of the Town of Chicoutimi.	Section 61 is in conflict with secs. 198 and 307 of criminal code, as appearing to contemplate the punishment of keepers of disorderly houses by virtue of a municipal by-law. To that extent enactment is beyond power of the provincial legislature.	463
Chap. 71....	An Act to amend the Act 44-45 Vict., chap. 44, incorporating the Quebec, Montmorency and Charlevoix Railway Company, and amendments thereto, and granting additional powers to the said company.	Section 6 might be open to objection, as provincial legislature could not empower the company to build or operate vessels on waters beyond the limits of the province.	464
Chap. 75....	An Act to incorporate The Merchants' Fire Insurance Company.	Section 11 construed as merely intended to define conditions under which, so far as provincial authority is concerned, company can be authorized to carry on business, and not intended to authorize the company to disregard provisions of Insurance Act. Provincial legislature cannot dispense with requirements of Insurance Act.	464
Chap. 83....	An Act to grant extended powers to the Municipal Corporation of the Town of Nicolet, and of St. Jean Baptiste de Nicolet,	Objected to as interfering with vested interests guaranteed under a previous statute, and authorizing imposition of a tax upon taxable property. Act considered within the powers of provincial legislation.	466
58 Vict., 1895, chap. 20.	An Act to amend the law relating to Fisheries and fishing in the waters under the charter of this Province.	Provisions of Act respecting seacoast and inland fisheries, strictly relate to seacoast and inland fisheries, as to which, legislative authority is vested in Parliament. They are also inconsistent with Dominion legislation which has already been enacted, covering same ground.	469

## NOVA SCOTIA.

31 Vict., 1868, chap. 2.	An Act to amend Chap. 120 of the Revised Statutes of the S solemnization of Marriage, and the Registration of Marriages, Births and Deaths, and the Act in amendment thereof.	This Act does not alter the previous law, except as to the person who shall distribute licenses, and therefore it may go into operation, but the right to issue the license must be referred to the law officers of the Crown.	472
Chap. 4	An Act to amend Chap. 137 of the Revised Statutes for the Relief of Insolvent Debtors.	This Act seems <i>ultra vires</i> , but as the Act amended by it was more for the relief of indigent debtors than a law of insolvency, it was allowed to go into operation. (A similar law of New Brunswick was declared unconstitutional by the court here.)	472
Chap. 11	An Act to amend Chap. 72 of the Revised Statutes of Commissioners of Sewers and the regulating of Dykes and Marsh Lands.	Grants power to commissioners appointed under it as well beyond, as within the boundaries of Nova Scotia and Act may therefore be beyond the jurisdiction of provincial legislature.	471

TABLE OF ACTS, 1867-1895—*Continued.*NOVA SCOTIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
31 Vict., 1868, chap. 18.	An Act to amend the Act for the appointment of a Stipendiary Magistrate and Police Constable in the Town of Pictou.	Section 2 allowing a jury of three disinterested persons to try a larceny case, is an interference with criminal procedure.	472
32 Vict., 1869, chap. 11.	An Act to amend Chap. 73 of the Revised Statutes of Shipping and Seamen.	Amendments to that Act can only be passed by B. N. A. Act, exclusive jurisdiction relating to trade and commerce, shipping and navigation.	474
Chap. 12....	An Act in addition to Chap. 162 of the Revised Statutes of offences against the Public Peace.	Sections 2 and 3 relate to criminal law, and doubts entertained whether they are not <i>ultra vires</i> .	474
Chap. 16....	An Act to amend Chap. 92 of the Revised Statutes of the preservation of useful birds and animals.	Beyond jurisdiction of provincial legislature as it relates to subject of trade and commerce.	474
33 Vic., 1870, chap. 2.	An Act to improve the Administration of Justice.	Section 8 legislates as to the discharge of insolvent debtors, and perhaps infringes on the jurisdiction of Canada, but the objection is not of sufficient importance to warrant disallowance.	475
34 Vict., 1871, chap. 57.	An Act to incorporate the Nova Scotia Mutual Fire Insurance Company.	Section 14 is unconstitutional as declaring certain conduct a misdemeanour.	476
36 Vict., 1873, chap. 38.	An Act to incorporate the Whitehaven, New Glasgow and North Shore Railway.	Section 6 gives power to purchase, etc., without the province. Sec. 9, giving power to cross any river, brook or stream, does not except navigable waters.	478
Chap. 39....	An Act to incorporate the Sydney and East Bay Railway Company.	Sections 9 and 12.—The remarks as to chap. 38 apply also to this one. Sec. 10 should be limited to railways within the province.	478
Chap. 40....	An Act to incorporate the Nictaux and Atlantic Railway Company.	Sections 8, 11 and 14.—The remarks on chap. 38 apply also to this Act.	478
37 Vict., 1874, chap. 14	An Act to amend the Revised Statutes of Licenses for the sale of Intoxicating Liquors.	Purports to restrain and prohibit the sale of intoxicating liquors under certain circumstances, and provisions may be in restraint of trade.	489
Chap. 15....	An Act to prevent the sale of Intoxicating Liquors at Camp Meetings.	do do ...	489
Chap. 18....	An Act to establish County Courts....	Section 3 limits the choice of the Governor General in appointing judges.	481 489
Chap. 62....	An Act to incorporate the Eastern Counties Railway Company.	Section 10 is <i>ultra vires</i> as authorizing the company to purchase, &c., within and without the province. Sec. 13, empowering to cross any harbours, &c., makes no reservation regarding navigation.	481
Chap. 63....	An Act to incorporate the Inverness Railway Company.	Section 14.—See remarks on chap. 62 as to navigation.	481
Chap. 68....	An Act to incorporate "Styles Mining Company," Limited.	Section 10 do do	481
Chap. 69....	An Act relating to the General Mining Association, Limited.	Section 2 do do	481

TABLE OF ACTS, 1867-1895—*Continued.*NOVA SCOTIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
38 Vict., 1875, chap. 25.	An Act for amending the law relating to Election Petitions and for providing more effectually for the Prevention of Corrupt Practices at Elections.	Section 74 deals with criminal procedure..	490
Chap. 29....	An Act to continue the Acts of Incorporation of Wharf, Pier and Break-water Companies.	Section 1 continues certain powers which may be beyond local jurisdiction, but the Act may go into operation.	490
Chap. 76....	An Act to incorporate the Globe Marine Insurance Company.	(On this Act together with chaps. 77, 78 and 79, reference is made to the report of 27th Oct., 1875, upon the Prince Edward Island Act to incorporate the "Merchants' Marine Insurance Company," ante page 1162, in which the unlimited nature of the business to be done is pointed out; and also to the report of 16th Nov., 1875, upon the Ontario Act to incorporate the "Canada Fire and Marine Insurance Company," ante page 142, which points out that the Act does not provide that the chief place of business of the company shall be in the province, and also objects to the name "Canada" as indicating more than provincial power.	491
Chap. 77....	An Act to continue and amend the Act relating to the Nova Scotia Marine Insurance Company.		
Chap. 78....	An Act to incorporate the Maitland Marine Insurance Company.		
Chap. 79....	An Act relating to the Union Marine Insurance Company of Nova Scotia.		
Chap. 89....	An Act to incorporate the Colchester Lumber Driving and Manufacturing Company.		
Chap. 90....	An Act to incorporate the St. Margaret's Bay Lumber and Timber Driving Company.	It is objected to this and also chaps. 90, 91 and 92, that they empower the companies to levy tolls not merely for the conveyance of logs, &c., through the improvements, but also on the navigable parts of the rivers. Also that some of these streams might be made navigable by a small expenditure, and that chap. 92 does not contain a restrictive clause as to navigation.	492
Chap. 91....	An Act to incorporate the Cumberland Driving Company.		
Chap. 92....	An Act to incorporate the Liscombe River Driving Company.		
39 Vict., 1876, chap. 1.	An Act to alter and amend Chap. 75 of the Revised Statutes of Licenses for the sale of intoxicating liquors and the Acts in amendment thereof.	The word "offence" is several times used.	495
Chap. 22..	An Act respecting the Legislature of Nova Scotia	Sec. 2 asserts a right to legislate in excess of what has been decided to be the legislative power of a province. Sec. 14, subsec. 3, should be confined to officers of the legislature. Sec. 17, last paragraph, gives the rules of either House the force of law.	496
Chap. 24..	An Act to amend Chap. 25 of the Revised Statutes, 14th Sec. of the Church of England.	Had legislation been entirely novel, it might be necessary to consider how far under our political system it was proper to make enactments contained in Act.	496
Chap. 42..	An Act respecting the Lower Chazyet-cook Dyke, in the County of Halifax.	Section 4 uses the term "offence" already objected to.	496
Chap. 43..	An Act to provide for supplying the Town of Dartmouth with water.	Section 21 is wide enough to embrace breaches of the criminal law.	496
Chap. 49..	An Act to amend the Act to incorporate the Town of Truro.	Sections 8 and 10 appear to trench upon criminal law and procedure.	496



TABLE OF ACTS, 1867-1895—*Continued.*NOVA SCOTIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
39 Vict., 1876, chap. 88.	An Act to amend the Act to incorporate the Colchester Lumber Driving and Manufacturing Company.	See remarks on the original Act, chap. 89, 38 Vic., 1875, page 492.	496
Chap. 92....	An Act to incorporate the Nova Scotia Fishing Company (Limited).	There is no provision as to the place or places where the business is to be carried on, or as to the range of the powers of the company.	496
40 Vict., 1877, chap. 57.	An Act further to amend the Act to incorporate the town of New Glasgow.	Sec. 4 provides that all fines, costs and fees shall form a fund to pay the recorder's salary and expenses of the court; this should be restricted to fines, &c., under laws within the exclusive jurisdiction of the province. Sec. 8 confers on the police court the powers of one or more justices of the peace.	498
Chap. 67....	An Act to incorporate the Truro Marine Insurance Company.	Authority to incorporate a company to transact marine insurance is doubtful, as power to do so must be derived from power to incorporate companies with provincial objects.	499
Chap. 68....	The Shipowners' Marine Insurance Company of Windsor (Limited).	do do do	500
Chap. 69....	An Act to amend the Act to incorporate "The Maitland Marine Insurance Company."	do do do	500
42 Vict., 1879, chap. 22.	An Act respecting Estreats.....	Doubtful if sections of Act making provision for collection of all fines and forfeited recognizances imposed or forfeited by or before the supreme court in any county in the province are within legislative competence of the local legislature.	505
43 Vict., 1880, chap. 9.	An Act to amend chap. 85, Revised Statutes, 3rd series, "of the Regulation and Inspection of Provisions Lumber, Fuel and other Merchandise.	Provisions of the Act seem to entrench on the subject of trade and commerce.	506
Chap. 11....	An Act to amend the laws relating to Barristers and Attorneys.	Sec. 14 appears to be beyond the powers of the legislature, in so far as they relate to the court of vice admiralty.	506
Chap. 68....	An Act to amend the Act to incorporate the Nova Scotia Society for the Prevention of Cruelty to Animals.	Sec. 7 seems to deal with the subject of criminal law or the procedure in criminal cases.	506
44 Vict., 1881, chap. 11.	An Act in reference to Crown lands and Crown Surveyors.	Sec. 3 of Act declaring that when proceedings are taken for escheat of any lands, such lands shall be deemed and held to be vested in the Crown, &c., is <i>ultra vires</i> , as the Dominion and not the province is entitled to escheated lands.	507
Chap. 16....	An Act to amend the Nova Scotia Railway Act, 1880.	This Act was petitioned against and disallowance asked for, but upon investigation it was found to be unobjectionable, and was left to its operation.	517

TABLE OF ACTS, 1867-1895—*Continued.*NOVA SCOTIA—*Continued.*

Act.	Title.	Reasons for Objection on Comment.	Page.
45 Vict., 1882, chap. 20.	An Act for the consolidation of the Nova Scotia Railways.	Doubts as to whether recitals in Act relating to railways owned by the Dominion contained statements respecting rights of province not in accord with rights admitted by Dominion to exist, and whether policy of the Act conflicts with Dominion policy. There being nothing in recitals or Act, to which exception could be taken the Acts were left to their operation.	518
Chap. 21....	An Act to amend the Nova Scotia Railway Act of 1880, and the Act in amendment thereof.		
Chap. 61....	An Act to incorporate the Eastern Development Company (Limited).		519
Chap. 73....	An Act to incorporate the Pictou Oil Company.	Admitting that powers granted by these Acts to own ships within the province is a provincial object, authority should be given with such limitations as not to conflict with sec. 91, para. 29, and sec. 92, para. 10, of British North America Act.	
46 Vict., 1883, chap. 19.	An Act to authorize the raising of a Provincial Loan.	Acts petitioned against and disallowance asked for, but on investigation the Acts were found to be within the legislative competence of the legislature, and do not entrench on the general railway policy of the Dominion, and they were left to their operation.	520
Chap. 21....	An Act respecting the Eastern Extension Railway.		
Chap. 85....	An Act to amend an Act to incorporate the Spring Hill and Parrsboro' Coal and Railway Company, and the Acts in amendment thereof.		521
47 Vict., 1884, chap. 19.	An Act to amend chap. 137, Revised Statutes, 3rd Series, of the relief of Insolvent Debtors.	Difference of opinion exists with respect to authority of legislature of province over this subject.	522
Chap. 25....	An Act to improve the Administration of Justice.	Some of provisions of sec. 3 relating to qualifications of the judges, the offices they may hold, their precedence and oaths of office to be taken by them are not within authority of legislature and considerable doubt exists with respect to other provisions.	523
48 Vict., 1888, chap. 1.	An Act respecting the 5th series of the Revised Statutes, and also the Revised Statutes, 5th series.	See pp. 531-533.	531
Chap. 23....	An Act to enable the Government of Nova Scotia to appropriate land for public purposes.	Litigation which it was alleged these Acts would interfere with was decided by supreme court adversely to petitioners against the Acts, and as their provisions are within authority of legislature, power of disallowance was not exercised.	533
Chap. 31....	An Act to confirm sales of land under order of Supreme or Equity Courts.		
Chap. 39....	An Act to confirm and give effect to an Indenture bearing date the 27th July, 1883, and purporting to be made between the North American Construction Company of the first part, and others.		533
49 Vict., 1886, chap. 1.	An Act to authorize certain grants in aid of railways and to provide for the completion and consolidation of the railways between Halifax and Yarmouth.	Act was petitioned against and disallowance asked for, but as Act was within legislative competence of provincial legislature, it was left to its operation.	558

TABLE OF ACTS, 1867-1895—*Continued.*NOVA SCOTIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
49 Vict., 1886, chap. 2.	An Act to incorporate the Halifax and Great Western Railway Company.	Some of powers given to company appear to be of unusual character, but as Act is within legislative competence of legislature, Act left to its operation.	563
Chap. 3....	An Act respecting the sale of Intoxicating Liquors.	Section 58, subsection 2, is not within legislative authority of provincial legislature, and for reasons more fully stated on pp. 563-564.	563
Chap. 81....	An Act to provide for the management and improvement of the Cemetery in Upper Steviacke, in the County of Colchester.	Section 15 of chap. 81, sec. 14 of chap. 136, sec. 15 of chap. 147 and sec. 18 of chap. 168 objectionable, as dealing with subjects of malicious injuries to property and larceny, which are punishable under the criminal law. Apart from question of legislative authority, and that provisions are unnecessary, enactments of this character should not be inserted in private Acts, but should appear in public general laws, so that all may be aware thereof.	559
Chap. 136....	An Act to incorporate the Forest Hill Cemetery Company of Colchester.		560
Chap. 147....	An Act to incorporate the Trustees of South Brook Cemetery, in the County of Inverness.		
Chap. 168....	An Act to incorporate the Plymouth Cemetery Company.		
Chap. 88....	An Act to amend the Acts relating to the Town of Dartmouth.	Section 176 giving power to peace officer to arrest without warrant, trenches on criminal law and in view of provisions of Revised Statutes of Canada, chap. 174, sec. 24, is unnecessary. Sec. 182 providing that fines and forfeitures collected in stipendiary magistrates' and police courts should form part of general revenues of the town, should be limited to fines and forfeitures subject to legislative authority of legislature. Power to make by-laws relating to use and management of docks and wharfs, weighing and measurement of salt and other commodities, the prevention of vice and immorality, the discharging and depositing of ballast in harbour, should be subject to legislation at any time enacted by parliament of Canada.	560
Chap. 98....	An Act to incorporate the Town of Kentville.	Observations made with respect to chap. 88 are applicable to these Acts.	560
Chap. 105....	An Act to consolidate and amend the Acts relating to the Town of New Glasgow.		
50 Vict., 1887, chap. 6.	An Act relating to the administration of Criminal Justice in the Supreme Court.	In leaving Act to operation, Dominion government do not share doubt expressed in the preamble, as to whether the responsibility of paying expenses of criminal prosecution, was imposed on federal or provincial governments.	571
Chap. 12....	An Act to amend chap. 105 of the Revised Statutes of the County Courts and the procedure therein.	Act petitioned against as operating unfairly against litigants, and to prejudice of pending suits in court, and that legislation altering rights and status of litigants was pernicious. Act was deemed within legislative authority of province, and was left to its operation.	572



TABLE OF ACTS, 1867-1895—*Continued.*NOVA SCOTIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
50 Vict., 1887, chap. 20.	An Act to amend chap. 42 of the Revised Statutes of Commissioners of Sewers and Dyked and Marsh Lands.	Act petitioned against, as being legislation compelling owners of marsh lands to refund expenses of commissioner connected with litigation instituted against him in his private capacity. Act deemed within legislative authority of the province and left to its operation.	572
Chap. 51....	An Act to amend the Act to incorporate the Town of Kentville.	Sections 253 and 257 relating to application of fines are inconsistent with provisions of chap. 180, Revised Statutes of Canada. Sec. 269, subsec. 20, purporting to give town council power to make regulations for discharging and depositing of ballast, &c., in rivers and harbours is beyond competence of provincial legislature. Provision of Act relating to appointment of stipendiary magistrates is doubtful.	572
Chap. 52....	An Act to consolidate, with amendments, the Acts of incorporation of Town of Windsor, and the Acts of amendments thereof.	Open to same objections as chap. 51. Power conferred by sec. 239, subsec. 16, to make regulations as to suppression of vice and as to observance of Sunday, is doubtful.	573
Chap. 56....	"An Act to incorporate the Bolton, Parrsboro' and Londonderry Railway and Steam Navigation Company," (Limited).	Title seems to indicate that promoters intended that business of the company should be done outside province of Nova Scotia.	574
Chap. 92....	An Act to incorporate the Nova Scotia Gas and Electric Light, Fuel and Power Company.	Sections 18, 19 and 20 objectionable, as trenching on criminal law.	574
Chap. 94....	An Act to incorporate the Amherst Electric Light and Water Company (Limited).	Section 15 trenches on criminal law .....	574
Chap. 95....	An Act to incorporate the Mountain Cemetery Company (Limited).	Section 18      do      do      .....	574
Chap. 102....	An Act to incorporate the New Glasgow Electric Company (Limited).	Section 19      do      do      .....	574
Chap. 108....	An Act to incorporate the Truro Electric Company.	Section 19      do      do      .....	574
51 Vict., 1888, chap. 1.	The Towns Incorporation Act, .....	Section 269 objectionable as giving power to make by-laws on following subjects: (a) weighing and measurement of coal and wood, salt, &c.; (b) prevention and punishment of vice, immorality, &c., on public streets, and prevention of profanation of Sunday—these matters being within control of parliament of Canada. Sec. 15, relating to licensing of auctioneers, pedlars, &c., who are not ratepayers of town, is of doubtful validity. Sec. 187, giving enlarged jurisdiction to municipal court, is open to serious objection.	581
Chap. 2....	An Act to amend and consolidate the Acts relating to Municipal Assessments.	The British North America Act limits the powers of taxation vested in provincial legislature to imposition of direct taxes, while the result of some of the provisions of this Act may be of the nature of indirect taxation.	581

TABLE OF ACTS, 1867-1895—*Continued.*NOVA SCOTIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
51 Vict., 1888, chap. 9.	An Act in relation to the Public Health.	Section 2, subsec. 4, appears to entrench on legislative authority of Canada respecting quarantine, navigation and shipping.	582
Chap. 11....	An Act to consolidate and amend the enactments relating to Trustees, and for other purposes.	Section 8 trenches on the criminal law....	582
Chap. 16....	An Act to amend chap. 56 of the Revised Statutes, "of county incorporations," and an Act in amendment thereof.	Act purports to give municipal councils power to make by-laws respecting the licensing of auctioneers, &c., who are not ratepayers within county or province. Is of doubtful validity, in view of exclusive right of Dominion parliament to regulate trade and commerce.	582
Chap. 30....	An Act relating to Bills of Lading ...	Act seems to entrench upon jurisdiction of parliament of Canada in respect to trade and commerce.	582
Chap. 37....	An Act to amend chap. 106, Revised Statutes, "of Juries."	Enactments respecting grand and petit juries may, to some extent, affect procedure in criminal cases.	583
Chap. 40....	An Act respecting the Liquor License Act, 1886.	Act passed to obtain judicial decision from Nova Scotia Supreme Court as to constitutionality of Liquor License Act, 1886. The court decided the Act was <i>ultra vires</i> , and refused to hear question referred by Lieutenant-Governor in Council.	583
Chap. 43....	An Act to legalize the Jury Panels and Assessment Rolls for 1888.	Affects the question of "procedure in criminal cases."	583
Chap. 82....	An Act to incorporate the Annapolis and Atlantic Railway Company (Limited).	Section 31 infringes upon the exclusive legislative authority of the Dominion in respect to bills of exchange and promissory notes. Sec. 32 infringes upon the exclusive legislative authority of the Dominion in respect to aliens.	
Chap. 137...	An Act to incorporate the Halifax Vinegar and Pickling Company (Limited).	Sec. 14 infringes upon the exclusive legislative authority of the Dominion in respect to bills of exchange and promissory notes.	582
Chap. 145...	An Act to incorporate the Melaga Mining Company (Limited).	Section 18 do do do ..	583
Chap. 151...	An Act to incorporate the Nova Scotia Stone Company (Limited).	Section 20 do do do ..	583
Chap. 128...	An Act to amend chap. 100 of the Acts of 1887, intituled: "An Act to incorporate the Nova Scotia Telephone Company (Limited)."	Act violates principle that provincial legislature cannot authorize a company to do business beyond the limits of the province; nor can it ratify an agreement made between two companies providing for carrying on of business by one or other of them in another province.	583
52 Vict., 1889, chap. 9.	An Act to amend and consolidate the Acts relating to the County Courts.	Open to objection of attempting to limit the power to appoint judges vested in the Governor General by the British North America Act.	585

TABLE OF ACTS, 1867-1895—*Continued.*NOVA SCOTIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
52 Vict., 1888, chap. 57.	An Act to amend chap. 159, Revised Statutes of Nova Scotia, 3rd series, intitled: "Of offences against Religion."	Doubtful if the statute which this Act purports to amend is within the competence of the provincial legislature. Professes to regulate penalties for the violation of provisions existing in Nova Scotia before confederation on subject of Sunday observance.	586
Chap. 114...	An Act further to amend the Act to incorporate the Nova Scotia Telephone Company (Limited).	Provisions are beyond the competence of the provincial legislature. <i>See ante</i> chap. 128 of 1888 (page 583).	586
Chap. 119...	An Act to amend Chap. 131 of the Acts of 1888, intitled: "An Act to incorporate the New York and Nova Scotia Iron and Railway Company (Limited)."	Section 3 contains a provision relating to rights and capacities of aliens, which is a matter within exclusive legislative jurisdiction of Dominion parliament.	586
Chap. 126...	An Act to incorporate the Amherst Street Railway Company (Limited).	Provisions of these Acts purport to confer on the companies to which they relate powers to make bills of exchange and promissory notes—a matter in which parliament of Canada alone has legislative jurisdiction.	586
Chap. 143...	An Act to incorporate the Lake View Mining Company (Limited).		
Chap. 144...	An Act to incorporate the Dawes Gold Mining Company (Limited).		
Chap. 147...	An Act to incorporate the American Steam Compressed Fish Company (Limited).		
Chap. 148...	An Act to incorporate the Eureka Manufacturing Company (Limited).		
Chap. 150...	An Act to incorporate the Dufferin Gold Mining Company (Limited).		
Chap. 151...	An Act to incorporate the Cape Breton Fish and Trading Company (Limited).		
Chap. 157...	An Act to incorporate the Nova Scotia Condensed Milk and Canning Company (Limited).		
53 Vict., 1890, chap. ...	An Act to amend Chap. 60 of Acts of 1865, intitled: "An Act to incorporate the Foreign Missionary Board of the Baptist Convention of Nova Scotia, New Brunswick and Prince Edward Island."	Act deals with corporation created in 1865. Original corporation was not provincial in its object nor private and local in its character. Upon passing of British North America Act it ceased to be within legislative authority of the province—and is invalid.	587
Chap. 122	An Act to amend Chap. 81 of the Acts of 1879, intitled: "An Act to incorporate the Home Mission Board of the Baptist Convention of Nova Scotia, New Brunswick and Prince Edward Island."	Open to same objections as Act above mentioned.	587
55 Vict., 1892, chap. 1.	An Act to amend and consolidate the Acts relating to Mines and Minerals.	Section 115 prejudiced vested rights in litigation in supreme court then pending. Sec. 156 vests more extensive powers in Lieutenant-Governor than is consistent with public interests.	629



TABLE OF ACTS, 1867-1895—*Continued.*NOVA SCOTIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
55 Vict. 1892, chap. 2.	An Act to amend an Act of the present Session, intituled: "An Act to amend and consolidate the Acts relating to Mines and Minerals."	Section 117 of chap. 1 exacts from lessees of coal areas a rate of royalty in excess of that guaranteed them for fixed period, which had not expired; and sec. 118 interferes with lessees' rights in respect to renewal of leases.	629
Chap. 3. . . .	An Act respecting the Royalties on Coal.	do do do ..	629
Chap. 42 . . .	An Act to amend Chap. 3, Revised Statutes, of the composition, powers and privileges of the House.	Disallowance asked for, but Act considered within the competence of local legislature and allowed to go into operation.	630
Chap. 112. . .	An Act to amend Chap. 92, Acts of 1891, intituled: "An Act to enable the Municipality of Lunenburg to borrow for a Court-house."	do do do ..	630
Chap. 17. . . .	An Act to amend the Towns Incorporation Act of 1888.	Some of powers delegated to town council by secs. 42 and 55 appear to relate to criminal law.	633
56 Vict., 1893, chap. 141.	An Act to authorize the sale of the Yarmouth and Annapolis Railway, formerly the Western Counties Railway, in the Province of Nova Scotia, to the Windsor and Annapolis Railway (Limited).	Open to very grave doubt whether the provincial legislature has power to authorize such transfer as that contemplated by these Acts, in view of fact that the railway has been declared by parliament to be for the general benefit of Canada	634
Chap. 143. . .	An Act to amend an Act of the present Session, intituled: "An Act to authorize the sale of the Yarmouth and Annapolis Railway, formerly the Western Counties Railway, in the Province of Nova Scotia, to the Windsor and Annapolis Railway (Limited)."		
Chap. 52. . . .	An Act to amend Chap. 58 of the Acts of 1891, intituled: "An Act to consolidate and amend the Acts relating to the City of Halifax."	Section 13, in so far as it relates to the subject of immigration, is <i>ultra vires</i> . Section left to such operation as it may have with regard to matters within legislative authority of province.	634
Chap. 155. . .	An Act to incorporate the Annapolis and Granville Bridge and Harbour Improvement Company.	Not within power of provincial legislature (the Annapolis River being navigable) to authorize the construction of any works upon it which would impede or interfere with navigation, except upon obtaining the necessary authority from the Dominion.	635
Chap. 167. . .	An Act to incorporate the Fishermen's Marine Insurance Company (Limited).	Powers conferred upon the company by Act are not limited strictly to a provincial object. It would be <i>ultra vires</i> of legislature to authorize a company to insure vessels not belonging to or engaged in the trade of the province.	635
56 Vict., 1893, chap. 175.	An Act to incorporate the Stellarton Loan Association.	Open to question whether provisions of sec. 9 directing that operations of the company shall be confined to receiving deposits of money and lending same under regulations fixed by by-laws, same not to exceed \$20,000, do not relate to subject of banks and banking, rather than to matter within the legislative control of province.	635

TABLE OF ACTS, 1867-1895—*Continued.*NOVA SCOTIA—*Concluded.*

Act.	Title.	Reasons for Objection or Comment.	Page.
56 Vict., 1893, chap. 193.	An Act to amend an Act to incorporate the Halifax Trust and Loan Society, Limited.	Powers granted to company relate more to subject of banking and commerce than to matter within legislative control of province.	636
Chap. 217...	An Act to incorporate the Greenwood Cemetery Company.	Provisions constituting it an offence to wilfully injure or destroy any monument, tree or other property within the cemetery relate to the subject of criminal law, and are not within the legislative control of province.	636
Chap. 218...	An Act to incorporate the Lockeport Cemetery Company.		
Chap. 219...	An Act to incorporate the Canso Cemetery Company of Canso, Guysboro' County.		
Chap. 124...	An Act relating to the Town of Stellarton.	Statute interferes with vested rights under contracts. Act <i>ultra vires</i> as it affected the public property of Canada, and was intended to interfere with the obligation of a contract, to which crown in right of Canada, is a party, and to require the crown to accept the obligation of town of Stellarton to carry out contract existing between Her Majesty and the town of New Glasgow.	641
57 Vict., 1894, chap. 37.	An Act to consolidate the Acts relating to the establishment and operation of a public ferry between Dartmouth and Halifax.	Sections in these Acts deal with subject of malicious injuries to property, which appertains to criminal law, and has been so dealt with under criminal code. It is, therefore, beyond power of local legislature to constitute malicious injury to property, as an offence, or declare what shall be its punishment.	643
Chap. 116...	An Act to incorporate the Central Falmouth Cemetery Company.		
Chap. 117...	An Act to incorporate St. Andrew's Cemetery Company in New Gairlock, in the County of Pictou.		
58 Vict., 1895, chap. 70.	An Act to provide for supplying the Town of Digby with water, and to borrow money for such purpose.	Section 2 in these Acts authorizes the construction of dams and other works in any lake, river or stream in Digby County, N.S. ( <i>See</i> remarks on chap. 155 of 1893, ante page 635).	645
Chap. 95...	An Act to provide for supplying the Town of Westville with water		
Chap. 107...	An Act to incorporate the Halifax Electric Tramway Company (Ltd.)		
Chap. 108...	An Act to incorporate the Halifax Auer Light Company (Limited).	Certain sections stating that aliens may be shareholders, directors or officers of the companies, and entitled equally with British subjects to all rights as such. As parliament has exclusive jurisdiction with respect to aliens, provisions in question would appear to be <i>ultra vires</i> .	646
Chap. 111...	An Act to incorporate the North Sydney Mining and Transportation Company (Limited).		
Chap. 117...	An Act to incorporate the Longfellow Sanitarium Company (Limited).		
Chap. 118...	An Act to incorporate the Dawson Construction Company (Limited).		
Chap. 119...	An Act to incorporate the Greenfield Mining and Development Company (Limited).		
Chap. 169...	An Act to incorporate the Middle LaHave Cemetery Company (Limited).	Section 18 relates to subject of wilful injury to property. It therefore relates to question of criminal law and establishes penalties already punishable under Dominion statutes.	646

TABLE OF ACTS, 1867-1895—*Continued.*

## NEW BRUNSWICK.

Act.	Title.	Reasons for Objection or Comment.	Page.
31 Vict., 1868, chap. 25.	An Act to exempt the Homesteads of families from levy or sale on execution.	Section 9 makes the fraudulent violation of an oath by an appraiser, a felony.	648
Chap. 56....	An Act relating to the Central Bank of New Brunswick.	Relates to banking and the issue of paper money.	648
Chap. 57....	An Act to extend the time for the building of the Albert Railway.	The subsidy to this railway is a liability of the Dominion, and the provincial legislature had no power to extend it.	648
32 Vict., 1869, chap. 3.	An Act in amendment of the Act of Assembly, 24 Vict., chap. 30, relating to the Police Force in the City of St. John.	Appears to affect criminal procedure.....	654
33 Vict., 1870, chap. 35.	An Act to divide the Parish of St. Stephen, in the County of Charlotte, and to erect a separate District for Ecclesiastical purposes.	This Act was petitioned against, but was, after consideration, allowed to go into operation by lapse of time without comment.	660
34 Vict., 1871, chap. 1.	An Act relating to the Police Establishment in the City of Fredericton.	Section 14 is in excess of provincial jurisdiction, in providing that the police magistrate can do alone what requires two or more justices of the peace.	662
Chap. 6....	An Act in addition to an Act passed in the 33rd year of the reign of Her present Majesty, intituled: "An Act to continue and amend An Act to regulate the sale of Spirituous Liquors."	Considerable doubt expressed whether this Act is not in some respects <i>ultra vires</i> , as interfering with trade, but its constitutionality can be tested in the courts.	662
Chap. 19 ...	An Act to authorize the appointment of a District or Stipendiary Magistrate for the County of Gloucester.	Is objectionable for the same reason as given respecting chap. 1.	662
Chap. 21....	An Act relating to Common Schools...	This Act was petitioned against, but was considered within the jurisdiction of the province.	662
36 <sup>1</sup> Vict., 1873, chap. 13.	An Act further relating to the several County Courts of New Brunswick.	Section 1 refers to appeals from the conviction of a justice of a county court in its criminal competence, a matter of criminal procedure.	703
Chap. 29....	An Act to establish certain Courts in the County of Madawaska.	Section 4 is in effect the appointment of a judge, and therefore <i>ultra vires</i> .	703
Chap. 86....	An Act to incorporate the St. George Red Granite Company (Limited).	Section 3 contemplates the carrying on of a business by a company in England and in the United States.	703
Chap. 88....	An Act to incorporate the Lake George Railway Company.	No restriction as to navigable waters.	703
Chap. 91....	An Act to authorize David H. Budge and Samuel Stanton to erect a Boom across Eel River (near the mouth thereof), in the County of York; also side Booms and Piers in connection therewith.		
Chap. 92....	An Act to incorporate the North-west Boom Company.		
Chap. 93....	An Act to incorporate the Bay of Fundy Red Granite Company (Limited).		
Chap. 100...	An Act to incorporate the Back Creek Stream Driving Company.		



TABLE OF ACTS, 1867-1895—*Continued.*NEW BRUNSWICK—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
36 Vict., 1873, chap. 103.	An Act to incorporate certain districts of the parish of St. Stephen, in the County of Charlotte, to be known as the Town of Milltown.	Section 42, subsec. 1, purports to confer on the town, the right to make by-laws regulating weights and measures. Sections 4, 5 and 6, appear to be in restraint, or regulation of trade and commerce.	704
38 Vict., 1875, chap. 11.	An Act to provide for the establishment, maintenance and management of Reformatory and Industrial Schools	The inconvenience and unsuitability of confining criminals and destitute, but unoffending, children in the same building is pointed out, but the Act is within provincial jurisdiction.	712
Chap. 13....	An Act to authorize the issue of Provincial Debentures for certain purposes.	The certain purposes are (1) aiding the construction of a bridge across the St. John River, at Woodstock, a navigable river.	709
Chap. 38... .	An Act to amend an Act to incorporate the Fredericton Boom Company, and the several Acts in amendment thereof.	The possible interference with navigation by legislation of this nature has already been pointed out.	709
Chap. 40... .	An Act to incorporate the Town of Moncton.	Section 47 giving power to the council to provide for the management of wharfs, piers, &c., appears beyond provincial competence.	710
Chap. 100... .	An Act to provide for the establishment of a Police Force and Lock-up House at Caraquet, in the County of Gloucester.	Sections 5, 9 and 15, use the word "offence" in describing breaches of the Act. Sec. 7 provides a special punishment for assaults on constables. Sec. 8, the offence provided against by this section, is a malicious injury to property, already provided for by Canadian law. Secs. 10 to 15 and 19, appear to trench upon criminal procedure.	710
Chap. 111	An Act to incorporate the Maritime Mutual Fire Insurance Company.	The powers of the company not distinctly limited to a provincial business.	711
Chap. 116.	An Act to incorporate the St. Croix Wharf Company.	The inconvenience of such legislation has already been pointed out, and a question may arise as to the validity of the Act.	711
Chap. 118	An Act to incorporate the Shediac Station Wharf Co.	The observations made on chap. 116 apply also to this Act.	711
Chap. 123	An Act to incorporate the Beliveau-Albertite and Oil Company.	Authorizes the company to construct a railway or tramway over or across any brooks, streams, or rivers, &c., to build harbours, piers or breakwaters. The questions which may arise with reference to such legislation have already been pointed out.	711
Chap. 125	An Act to incorporate the Red Granite Company of St. George.	Section 8 contains provisions similar to those referred to in chap. 123.	711
Chap. 127	An Act to authorize the erection of a road across the Jacques River in the County of Northumberland.	Reference is made to remarks previously made upon legislation of a similar character. See pages 703 and 711.	711
Chap. 129	An Act to incorporate the Eel River Drilling Company.	do do	711
Chap. 143	An Act to incorporate the Maduxnaux Steam Drilling Company.	do do	711

## TABLE OF ACTS, 1867-1895.

## NEW BRUNSWICK—Continued.

Act.	Title.	Reasons for Objection or Comment.	Page.
39 Vict., 1876, chap. 51.	An Act to incorporate the New Brunswick Red Granite Company, (limited).	This Act contains provisions similar to those of chaps. 116, 118 and 123, and the same remarks are applicable.	713
Chap. 52....	An Act to incorporate the Lepreaux Red Granite and Freestone Company.	do do	713
Chap. 63....	An Act to incorporate the Pollet River Log Driving Company.	Reference is made to observations already made upon similar Acts of the last session. See pages 703 and 711.	713
40 Vict., 1877, chap. 33.	An Act relating to municipalities.....	Section 17 is an interference with the criminal law relating to perjury. Sec. 90, the word "offence" is used. Secs. 92, 93, 94 and 95, interfere with criminal procedure, and are very objectionable. Secs. 97, ss. 32 and 39, appear to trench upon the subject of weights and measures.	716
Chap. 11....	An Act relating to Fences, Trespasses and Pounds.	Section 8 uses the word "offence" already objected to.	718
Chap. 25....	An Act to regulate the sale of Spirituous Liquors in the Parishes of Lancaster, Simonds and St. Martins, in the City and County of St. John.	The right of a local legislature to deal with this question has already been doubted. Sec. 19, among other provisions, forbids the sale of liquor to Indians, who are not under local jurisdiction. Sec. 20, respecting seamen, already legislated upon by chap. 129, sec. 104, 1873, (Canada). Secs. 33 and 41, the word "offence" is used.	718
Chap. 27....	An Act to increase the facilities for the collection of small debts in the City of Fredericton.	The danger of permitting provincial legislation, which not only constitutes courts for the administration of justice, but also appoints the judges, is stated to have been pointed out with reference to Acts of British Columbia and Ontario.	719
41 Vict., 1877, chap. 8.	(Special session after St. John fire.) An Act to define and establish the Side Lines of Streets in the City of St. John and to prevent encroachments on the Public Streets.	Section 4 declares an encroachment upon a street to be of a public nuisance. A public nuisance is punishable by indictment under the criminal law.	722
41 Vict., 1878..	All the Acts of this Session were left to their operation with the remark on chap. 49, relating to the sale of Spirituous Liquors in Moncton, that the question as to interference with Trade and Commerce was still undecided.	.....	724
42 Vict., 1879, chap. 29.	An Act to incorporate the Sheer Boom Improvement Company.	The possible interference with navigation has already been pointed out with reference to similar legislation.	728
Chap. 30....	An Act to incorporate the Restigouche Boom Company.	do do	728
44 Vict., 1881, chap. 19.	An Act relating to the qualifications of Physicians and Surgeons.	Offence created by sec. 32, and for which a penalty is fixed, would appear to be a felony under 32-33 Victoria, chap. 19, sec. 4.	730

TABLE OF ACTS, 1867-1895—*Continued.*NEW BRUNSWICK—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
44 Vict., 1881, chap. 44.	An Act to incorporate the St. John Bridge and Railway Extension Company.	As necessary provisions taken so as not to interfere with the navigation of the River St. John, no action taken with reference to the Act.	730
45 Vict., 1882, chap. 9.	An Act in amendment of chap. 51 of the Consolidated Statutes in County Courts.	Effect of sec. 1, if within legislative authority of the legislature, is to remove from their offices, the judges of the King's and Albert county courts, and that, it is submitted, the legislature has no power to do.	731
Chap. 87....	An Act to revive, continue and amend the several Acts relating to Courtenay Bay Bridge Company.	Similar Act passed in 1877 was, after correspondence with department of marine and fisheries, allowed to go into operation. The company should, before acting upon it, have the site and plans approved, in accordance with the Act 45 Victoria, chap. 37.	731
46 Vict., 1883, chap. 17.	An Act in amendment of, and in addition to an Act passed in the 38th year of the reign of Queen Victoria, intitled: "An Act to incorporate the Town of Moncton."	The expression "fines, penalties, &c., incurred and paid, the provisions of any law or statute in force in the said province," is large enough to include fines, penalties, &c., incurred under Acts of parliament of Canada, and is not confined to laws or statutes within the legislative authority of the general assembly.	734
Chap. 37....	An Act to provide for the appointment of a Police Magistrate and to establish a Lock-up in Shediac, Westmoreland County.	Section 5 of Act, in terms, purports to make provision for the application of fines and penalties, which may become payable in respect of offences against Acts of parliament, and is objectionable, inasmuch as it makes provision for a matter not within legislative authority.	734
47 Vict., 1884, chap. 11.	An Act to reduce the expense of maintaining Government House, and relating to the salary of the Private Secretary of the Lieutenant Governor.	Under the respective responsibilities assumed at the union by Canada, and the province of New Brunswick, the government of Canada had reason to expect that the province would continue to make provision for the secretary's salary.	736
Chap. 13....	An Act respecting the granting of Licenses for the sale of Spirituous Liquors.	The Act is a fair enough exercise of recognized power of the legislature to raise revenue from shop, saloon, tavern and other licenses, but the question may arise as to whether the provincial legislature has a right to impose license fees on wholesale licenses, but they have hitherto exercised that power.	736
Chap. 19....	An Act respecting Law Stamps.	Provisions for collection of fees in legal proceedings in supreme court by means of stamps, and these fees, when collected, were to be paid to the receiver general of the province. A tax levied in the manner, in which these fees are imposed is an indirect tax, and cannot be imposed by a provincial legislature.	736
48 Vict., 1885, chap. 1.	An Act to amend and explain chap. 19 of Victoria 47 "An Act respecting Law Stamps, and the several Acts to which it is an amendment."	Attempt is here made to avoid the effect of the decision in Attorney General for Quebec vs. Reed, to which attention was called in the report on chap. 19 of 1884.	738



TABLE OF ACTS, 1867-1895—*Continued.*NEW BRUNSWICK—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
49 Vict., 1886, chap. 25.	An Act to incorporate the Town of Marysville.	The exercise, as a matter of police, subject to laws of parliament respecting criminal law, weights and measures, and navigation and shipping, are unobjectionable. Some of the provisions trench on the criminal law, and the language of the Act respecting the disposition of fines, penalties, &c. (recovered and imposed under laws of Canada), should be made clear that there is no intention to dispose of same.	739
Chap. 28....	An Act to incorporate the St. Croix Electric Light and Water Company.	Sec. 21 trenches on criminal law .....	740
50 Vict., 1887, chap. 3.	An Act respecting Public Health.....	Sec. 12 trenches upon subject of quarantine and establishment and maintenance of marine hospitals.	741
Chap. 4....	An Act respecting the sale of Intoxicating Liquors.	Sec. 73 purports to interfere with the business of brewers and distillers duly authorized to carry on their business within Canada under laws respecting inland revenue.	741
Chap. 28....	An Act to authorize corporations incorporated by the Parliament of Canada to lend and invest money in the Province of New Brunswick.	Open to same objections as similar Acts passed by Ontario, Quebec and Manitoba. See pages 244 <i>d</i> and 314, in which constitutionality of Act is discussed.	742
51 Vict., 1888, chap. 5.	An Act further relating to Mines and Mining Leases.	Act imposes new restrictions on lessees, other than these contained in original leases, with a penalty of forfeiture in case of non-compliance. Such legislation is at variance with principles of justice, and seems to invade the rights of property.	750
Chap. 30....	An Act to incorporate the Channel Subway Company.	Act authorizes interference with land, the property of Canada, by creating a corporation to excavate and construct a subway beneath harbour of St. John. Case of <i>Holman vs. Green</i> decides that land covered with water in public harbours of Canada belongs to Dominion. Also appears to infringe upon exclusive power of Dominion to make laws in respect to navigation.	748
Chap. 34....	An Act to incorporate the Tobique River Boom Company.	Tobique River is apparently a navigable stream. Act apparently interferes with exclusive legislative authority of Dominion parliament respecting navigation, and is also legislation in respect to public property of Canada.	751
Chap. 53....	An Act to continue the Fredericton Boom Company and to consolidate and amend the several Acts relating to the said Company.	See remarks made upon chap. 38 of 38 Vict. (1875), of New Brunswick. Ante page 709.	751
Chap. 78....	An Act to incorporate the New Brunswick Telephone Company.	Act interferes with, and restricts the operation of an Act of the Parliament of Canada, and has effect of materially lessening the value of franchises, which New Brunswick legislature had previously granted to another company.	749

TABLE OF ACTS, 1867-1895—*Continued.*NEW BRUNSWICK—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
51 Vict., 1888, chap. 81.	An Act to incorporate the Town of Campbelltown.	Secs. 14, 17 and 23 are beyond competency of local legislature, Sec. 14 having reference to navigation and shipping, and the management and control of the harbour, Sec. 17 to the observance of the Lord's day, the punishment of immorality, &c., and sec. 23 to punishing vagrants and drunkards.	751
52 Vict., 1889, chap. 7.	An Act respecting the Executive Administration of the Laws of the Province.	See remarks upon similar Act passed in Province of Quebec in 1889. 52 Vict., chap. 12. Ante page 432.	752
Chap. 23....	An Act respecting certain Criminal Courts.	Doubtful if Lieutenant-Governor has the right to appoint, or a provincial legislature to authorize the appointment of justices of the peace or other judicial officers.	752
Chap. 27....	An Act to unite the City of Portland with the City of St. John, in the City and County of St. John, and to amend the charter of the City of St. John and the law relating to civic government.	Provisions relating to the police court and to the city court are objectionable for the reasons mentioned in connection with chap. 23 <i>supra</i> .	753
54 Vict., 1891, chap. 13.	An Act to enable aliens to acquire, hold and convey real estate in this Province.	Act purports to empower aliens to acquire and dispose of real estate. Doubtful whether rights purported to be created by this Act can be obtained by provincial legislation, in view of right of Dominion to legislate respecting aliens.	755
Chap. 18....	An Act respecting railways.....	Secs. 72, 73 and 75 are <i>ultra vires</i> , in so far as they authorize the construction of any structure which would affect navigability of any navigable rivers or waters of Canada.	755
Chap. 48....	An Act to extend the powers of the Madawaska Log Driving Company (of Maine), to the provincial waters of the River St. John, above Grand Falls.	Doubtful, if in view of the British North America Act, sec. 92, articles 10 and 11 of this Act is <i>intra vires</i> of provincial legislature, as the company is not one with provincial objects merely, but would appear to be an "undertaking," extending beyond the limits of the province.	755
55 Vict., 1893, chap. 3.	An Act in addition to and in amendment of Chap. 20, Consolidated Statutes, of "Board of Works."	Provincial legislature cannot authorize diversion or occupation of beds of rivers which under British North America Act became part of the public property of Canada, as is done by secs. 3 and 7 respectively, of these Acts.	759
Chap. 45.	An Act for supplying the City of Moncton with water.		
Chap. 69.	An Act to incorporate the Fred. Dickson, Gibson and Maryville Electric Railway Company.		
Chap. 78.	An Act to incorporate the New Brunswick Trust and Loan Society.	To the extent to which River St. John is under the British North America Act, vested in Dominion, sec. 2 authorizing the construction and maintenance of a bridge over the river, is <i>ultra vires</i> .	760
		Powers conferred upon the company appear to trench on subject of banking, which is one of the subjects for Dominion legislation.	760

TABLE OF ACTS, 1867-1895—*Continued.*NEW BRUNSWICK—*Concluded.*

Act.	Title.	Reasons for Objection or Comment.	Page.
57 Vict., 1894, chap. 79.	An Act to continue the St. John River Log Driving Company, and for the consolidation and amendments of the Acts relating thereto.	"Rivers having been by British North America Act assigned to Dominion, it is not within power of provincial legislature to grant any authority or rights with respect to them, and this Act is thus objectionable, in so far as it is intended to apply to the rivers so assigned to Canada and <i>ultra vires</i> , so far as it would authorize it to interfere with or effect navigation of the rivers.	763
58 Vict., 1895, chap. 12.	An Act in amendment of an Act respecting Law Stamps.	Validity of these statutes open to doubt, in view of decision, in Attorney General Quebec vs. Reed, that tax levied by means of stamp duty on exhibits filed in court, could not be called "direct taxation" within meaning of sec. 92, of British North America Act.	765
Chap. 20. . . .	An Act to amend chap. 52 of the Consolidated Statutes, "Courts of Probate."		
Chap. 67. . . .	An Act to incorporate the Riverside Cemetery Company.	Sections 11 of chap. 67, and 9 of chap. 82, appear to be <i>ultra vires</i> , as affecting subject of criminal law, and as imposing penalties for offences, which have already been established under Dominion statutes.	766
Chap. 82. . . .	An Act to incorporate the Baker Brook Mill and Boom Company.		
Chap. 69. . . .	An Act to incorporate the Grand Falls Power and Boom Company (Limited).	Open to objections raised, as to right of provincial legislature to deal with navigable rivers, which are within legislative jurisdiction of Dominion parliament, under provisions of British North America Act. See ante page 763.	766
Chap. 86. . . .	An Act to incorporate the Tobique River Log Driving Company.		

## MANITOBA.

34 Vict., 1871, chap. 9.	An Act authorizing the appointment of Magistrates and Coroners.	Section 2 gives the police magistrate all the powers possessed by one, two or more justices of the peace.	769
35 Vict., 1872, chap. 3.	An Act to amend an Act to establish a Supreme Court in the Province of Manitoba.	Section 5 provides that no chief justice or puisne judge shall be appointed unless such person is able to speak both English and French. This is <i>ultra vires</i> .	774
Chap. 6. . . .	An Act for the Registration of Voters..	Sections 21 and 22 provide that the judge shall be liable to a fine for neglecting or refusing to perform any duty imposed upon him by this Act. Clause 99 of the British North America Act provides the manner in which judges can be called to account.	774
36 Vict., 1873, chap. 18.	An Act to amend the Act concerning the registration of deeds and to introduce a better system of registration.	Section 53 provides that persons committing certain offences shall be guilty of a misdemeanour.	780
Chap. 21. . . .	An Act to make provision for inquiries concerning Public Matters.	Section 2, the remarks on sec. 53, chap. 18, apply also to this.	780
Chap. 24. . . .	An Act respecting municipalities . . . .	Section 16, the remarks on sec. 53, of chap. 18, apply also to this.	780



TABLE OF ACTS, 1867-1895—*Continued.*MANITOBA—*Continued.*

Act.	Title.	Reason for Objection or Comment.	Page.
37-38 Vict., 1873-74, chap. 7.	An Act to incorporate the City of Winnipeg.	Section 1 is so broad and unrestricted as to entrench upon the subject of banking. Sec. 16 constitutes a misdemeanour. Sec. 90, subsec. 10, provides for providing the sale of spirituous liquors. The power to do so is questioned. Sec. 95, providing for inspection of weights and measures, is <i>ultra vires</i> .	785
Chap. 5....	An Act to provide a fair and equitable redistribution of the electoral divisions of the Province.	Measure defective owing to its framers not having fully understood that the settlement belt was not surveyed into townships, but that in regard thereto the original parishes and private holdings had been respected. Bill having been framed on the basis of the township surveys.	785
Chap. 12....	An Act respecting the Court of Queen's Bench in Manitoba.	This Act purports to confer on the court all the powers, &c., possessed by the superior courts of common law, chancery, oyer and terminer and general jail delivery, and of assize and <i>nisi prius</i> in England. It is questioned whether the assumption of such powers to the Court of Queen's Bench of Manitoba may not entrench upon criminal procedure.	786
Chap. 14....	An Act respecting the Registration of co-partnership.	This Act might restrict the rights of companies incorporated under the "Joint Stock Companies Act" of Canada.	787
Chap. 15....	An Act to require certain Foreign Corporations, Associations and Co-partnerships to register within the Province.	This might conflict with 31 Victoria, chap. 48 (Canada), under which foreign insurance companies have been licensed to do business in any part of Canada.	787
Chap. 19....	An Act to amend the Act of 1873 to regulate the Sale and Traffic of Intoxicating Liquors.	Sec. 1 provides that no person shall be granted a license to sell intoxicating liquors by retail in Manitoba outside the limits of Winnipeg. It is presumed this section shall not act in restriction of the parliament of Canada in this respect.	788
38 Vict., 1875, chap. 2.	An Act respecting the Election of Members of the Legislative Assembly of the Province of Manitoba.	Secs. 12 and 13 use the phrase "parliamentary" already objected to. Sec. 32, doubt expressed whether falsification of lists is not a crime within the meaning of the law of Canada, and therefore <i>ultra vires</i> . Secs. 33 and 34 use the phrase "parliamentary electors." Sec. 166 provides a penalty for the offence of forgery, and is clearly <i>ultra vires</i> . Sec. 166, subsec. 3, may trench upon the Act of Canada relating to malicious injury to property. Secs. 185 and 205 may also interfere with the criminal law. Sec. 206 provides punishment for subornation of perjury. Sec. 235, in some of its provisions, seem to trench upon the criminal law.	800
Chap. 5....	An Act respecting the Administration of Justice.	Secs. 58 to 61 entrench on the subject of insolvency, and are therefore not within the legislative competence of the local legislature. Sec. 60 also deals with the criminal law.	798

TABLE OF ACTS, 1867-1895—*Continued.*MANITOBA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
38 Vict., 1875, chap. 6.	An Act respecting Grand Jurors . . . . .	Doubt expressed whether subject of jurors is not a matter of criminal law and procedure, and therefore within the jurisdiction of the parliament of Canada.	798
Chap. 9 . . . . .	An Act respecting the qualification of Justices of the Peace.	Sec. 16 trenches on the criminal law by providing a penalty for a false statement or declaration under oath, which is perjury punishable under 32-33 Victoria, chap. 23, sec. 2.	799
Chap. 21 . . . . .	An Act respecting Building Societies . .	Secs. 2 and 11 appear to affect the question of interest. Sec. 16 appears to affect the question of insolvency. Secs. 17 and 18 trench on the criminal law.	801
Chap. 22 . . . . .	An Act to make provision as to the Custody of Insane Persons.	Sec. 26 appears wide enough to empower the Lieutenant-Governor to authorize the removal from the province of a criminal confined in jail or sent after conviction to an asylum for the insane, and so is objectionable as trenching on criminal law.	802
Chap. 26 . . . . .	An Act to amend the Act intituled: "An Act for the protection of the Wood Lands of the Province."	As the Act made it an offence punishable by fine or imprisonment to burn or set fire to any trees or timber on any lands in the province, inquiries were made as to the effect on settlement on Dominion lands in the province, and with regard to Dominion public works. No legal question being involved, the Act was left to its operation.	805
Chap. 27 . . . . .	An Act further to amend the Act to establish a system of education in this province.	Sec. 11 provides a penalty for signing a false report.	802
Chap. 30 . . . . .	An Act to amend the Act of 1873 to regulate the Sale and Traffic of Intoxicating Liquors.	Act open to the same objections which have been taken to a similar Act passed by the legislature of Ontario, which objections are <i>sub judice</i> .	802
Chap. 31 . . . . .	An Act respecting Municipalities . . . . .	Sec. 39, subsec. 12, appears to admit the transfer upon a tax sale to the purchaser, of the right of the holder or other person in lands sold for taxes, before the issuing of letters patent from the Crown.	802
Chap. 35 . . . . .	An Act to amend the Registry Act . . . .	This Act amends 36 Victoria, chap. 18, and recites that sec. 43 of that Act does not express the true meaning of the legislature. Sec. 1 (the amending clause) appears to be a direct interference with the devolution of the title of lands before the patents are issued. This would be within their power did the lands belong to the province, but Manitoba lands are the property of Canada until patented, and any provision as to assignments, &c., of unpatented lands should be made by Canada.	803
Chap. 41 . . . . .	An Act respecting County Municipalities.	Sec. 11—some provisions of this section may be <i>ultra vires</i> , but similar legislation in another province has been left to its operation. Sec. 24, subsec. 1, provides punishment for a false declaration. Sec. 179, subsec. 12, is open to the same objection as subsec. 12 of sec. 39, chap. 31.	803

TABLE OF ACTS, 1867-1895—*Continued.*MANITOBA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
38 Vict., 1875, chap. 46.	An Act to incorporate the Manitoba Western Railway Company.	The local legislature has no power to authorize the company, without the assent of the Crown, to enter on lands vested in the Crown.	803
Chap. 50....	An Act relating to the City of Winnipeg.	To sec. 13 of this Act several observations made upon chap. 2 are applicable.	803
99 Vict., 1876, chap. 1.	An Act to amend the School Acts of Manitoba, so as to meet the special requirements of incorporated cities and towns.	Section 35 relating to indecent behaviour seems to entrench on criminal law.	810
Chap. 2....	An Act respecting the Practice in the Courts.	Appointing power as to judges is in the Governor General in Council. More convenient way of working the 14th sec. of the Act, so far as government of Canada is concerned, would be by Privy Council approving the order which should be made by Lieutenant-Governor in Council, determining as to judges who should be designated to hold the court.	810
Chap. 3....	An Act respecting Jurors and Juries...	The provisions with respect to the selection of French and English speaking jurors would seem to require confirmatory legislation by Canada.	810
Chap. 5....	An Act to provide for the appointment of a Fire Commissioner for the Cities and Towns in Manitoba, and to define his powers and duties.	Section 9 appears to trench upon criminal procedure.	811
Chap. 7....	An Act to make better provisions for the securing of order at Municipal Elections, and for other purposes.	Sections 1, 2, 4 and 5 appear to trench upon criminal law and procedure.	811
Chap. 8....	An Act to provide for the incorporation of Mutual Fire Insurance Companies in the Province of Manitoba.	The business to be done is not expressly limited to the province. Sec. 70 requires companies affected by it to make full returns of their business, &c. Sec. 71 applies the previous section to all fire companies by whatever authority incorporated. Sec. 72 provides for winding up, and thus deals with insolvency.	811
Chap. 9....	An Act respecting the Public Works of Manitoba.	Section 31 gives power to remove obstructions, &c. This should be limited, so as not to trench upon the authority of Canada.	811
Chap. 11....	An Act respecting the Bureau of Agriculture and Statistics.	Upon 39 Vict., chap. 9, Ontario, it was observed that some of its provisions were <i>ultra vires</i> , but as a similar Act of Quebec has been allowed to go into operation, the same course was adopted with reference to the Act of Ontario, and the remarks upon that Act are applicable to the present one.	812
Chap. 12....	An Act respecting the Legislative Assembly.	Attention directed to observations made on former occasions upon infringement by provincial legislature on subject of statistics.	812



TABLE OF ACTS, 1867-1895—*Continued.*MANITOBA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
39 Vict., 1876, chap. 28.	An Act to diminish the Expenses of the Legislature of the Province of Manitoba in certain respects.	Doubt expressed as to competence of provincial legislature to alter its constitution by abolition of the legislative council, and question raised as to whether by operation of Imperial Act 34-35 Vict., chap. 28, sec. 6, constitutional powers of legislature of Manitoba are limited in this particular.	809
40 Vict., 1877, chap. 6.	An Act respecting county municipalities	Section 15 deals with criminal law relating to perjury. Sec. 16, subsec. 27 imposes penalties for short weight or count or measurement in anything marketed.	816
Chap. 12....	An Act to amend the Act to establish a system of education in this Province	Section 17 provides punishment for making false declarations. This seems an interference with the criminal law respecting perjury.	817
Chap. 14....	An Act respecting the Study and Practice of Law.	Former Act passed in 1872 was considered objectionable in some of its features and assent of Governor-General was not given. Provisions having been made for calling to the bar of the province of, persons duly called to the bars of other provinces, and similar arrangements as to admission as attorneys, the Act was left to its operation.	817
Chap. 15....	An Act to authorize Corporations and other Institutions incorporated out of the Province of Manitoba to lend and invest moneys therein.	Similar legislation in Ontario has been left to its operation, but the right to license a company already empowered by Canada to do business in any province is questioned.	818
Chap. 17....	An Act to legalize the Lists of the Parliamentary Elections of 1877 for the City of Winnipeg.	The word "parliamentary," before objected to, occurs in the title and first section.	819
Chap. 30....	An Act respecting Companies for the establishment of Cemeteries in Manitoba.	Section 28 provides punishment for destroying, defacing any tomb, monument, &c., and would seem to entrench upon the criminal law relating to malicious injuries to property.	819
Chap. 34....	An Act to amend the Acts relating to the Sale and Traffic of Intoxicating Liquors and the Granting of Licenses in this Province.	Section 3 seems somewhat to entrench upon the criminal law relating to forgery.	819
Chap. 43....	An Act to amend the amended Act respecting the incorporation of the City of Winnipeg.	Section 6 deals with the subject of interest. Sec. 13 disposes of all fines and penalties.	819
41 Vict., 1878, chap. 13.	An Act to create a fund for Educational purposes.	Act objected to by the Hudson Bay Company as in effect imposing an exceptional tax on their lands. Act was held by court to be unconstitutional, and was repealed at next session.	823
Chap. 14 ...	An Act to regulate the sale of Intoxicating Liquors and the granting of Licenses in this Province.	Some of provisions may be held to entrench upon the regulation of trade and commerce.	824

TABLE OF ACTS, 1867-1895—*Continued.*MANITOBA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
42-43 Vict., 1879, chap. 12.	An Act respecting Grand and Petit Jurors and Juries, and to amend the Manitoba Jurors' Act.	A similar Act of Ontario was left to its operation, and this, like the Ontario Act, is not to come into operation until proclaimed by the Lieutenant-Governor, and not to be proclaimed at all, if the supreme court decides against the power of a local legislature to regulate the number of grand jurors.	824
44 Vict., 1881, chap. 2.	An Act to bring into force and operation the Consolidated Statutes of Manitoba	Many provisions previously objected to have been re-enacted. For particulars see pages 830, 831.	831
Chap. 7....	An Act to protect Guide Posts along certain roads in this province.	Trenches upon criminal law. See 32 and 33 Vict., chap. 22, subsecs. 59 and 60.	831
Chap. 16....	An Act respecting the Equity side of the Court of Queen's Bench.	Act appoints a referee in chambers. Power of legislature to give an officer of the court judicial powers is extremely doubtful.	831
Chap. 28....	An Act for dividing the Province into Judicial Districts and establishing courts therein.	Sections 73, 75 and 77 deal with the empanelling of juries, and are not within authority of legislature.	832
Chap. 33....	An Act to incorporate the Southern Manitoba Loan Company.	Sections 2 and 15 deal with the question of interest.	832
Chap. 34....	An Act for the incorporation of the Winnipeg Suspension Bridge Company.	Act incorporates a company with power to build bridges over Assiniboine river between Winnipeg and St. Boniface West, plans and site to be approved by Governor General in Council. As Act is in accordance with 45 Vict., chap. 37, it was left to its operation.	832
45 Vict., 1882, chap. 35.	An Act to incorporate the City of Brandon.	Acts are much alike in terms, and comments apply equally to both, certain of the provisions trench on the subject of criminal law, and also deal with the subject of interest and in regard to sale of intoxicating liquors, in excess of powers of the local legislature.	835
Chap. 36....	Charter of the City of Winnipeg, Manitoba, consolidated from the Act of incorporation of the City of Winnipeg.		
Chap. 54....	An Act to amend 44 Vict., chap. 29, intitled: "An Act respecting the profession of Land Surveyors of Manitoba."	Objection was taken to sec. 5, subsec. 2, by which it was enacted that land surveyors who, prior to transfer to Canada, were duly authorized as such by council of Assiniboia, and apprentices who had served that full term of three years with a duly authorized surveyor, should, on application and payment of fee, be admitted to practice, on the ground that it would lower the standard of the profession and cause injury and inconvenience to the public. The Act being <i>intra vires</i> of the legislature, it was allowed to go into operation.	833
47 Vict., 1884, chap. 11.	An Act to amend and revise the Acts relating to Municipalities.	Powers given to municipal councils are in excess of those which a provincial legislature may confer, and trench on subject of criminal law, though possibly they might be regarded in the nature of police regulations.	837

TABLE OF ACTS, 1867-1895—*Continued.*MANITOBA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
47 Vict., 1884, chap. 32.	An Act respecting Liquor Licenses.	Question of the relative powers of parliament and the legislatures respecting the liquor traffic, is still <i>sub judice</i> .	838
Chap. 33....	An Act to provide for the revocation and cancellation of Liquor Licenses in certain cases.	do do do	838
Chap. 69....	An Act to amend an Act to incorporate the Manitoba Central Railway Company.	Objections touching general railway policy of Dominion.	840
Chap. 78....	An Act to consolidate and amend the several Acts of Incorporation of the City of Winnipeg.	Section 35, subsec. 2, authorizes taxation of property held by or in trust for Her Majesty, where it is occupied by person otherwise than his official capacity, shall be assessed therefor. This is in conflict with British North America Act. Secs. 149 and 192 deal with criminal law.	838
48 Vict., 1885, chap. 15.	An Act respecting the Court of Queen's Bench.	Section 9 gives jurisdiction to court to grant letters patent from crown to rightful claimants. Provision unobjectionable, if limited to crown in right of province of Manitoba. Sec. 10 authorizing decree of alimony trenches on subject of matrimony and divorce. Sec. 14 prescribes rank and precedence of chief justice and other judges of court, and sec. 16 authorizes judges to exercise jurisdiction in territories under authority of Governor General or Act of Canada.	848
Chap. 17....	An Act respecting the Administration of Justice.	Section 117 was objected to on ground that the exemptions from seizure under execution were so large as to be unjust. Section considered <i>intra vires</i> . Secs. 166, 177, 184, 192, 194, 195 and 197 contain provisions respecting juries. If, and so far as they are inconsistent with special legislation of parliament of Canada, they are of no force.	849
Chap. 18....	An Act to amend Chap. 37 of the Consolidated Statutes of Manitoba.	Relates to certain exemptions from execution in proceedings in equity, and stands in similar position to that of sec. 117 of chap. 17.	849
Chap. 20....	An Act respecting Promissory Notes and Bills of Exchange.	Is really an Act respecting evidence. Considered unfortunate that the Act should be so intitled, in view of fact that subject of bills and notes are within exclusive legislative authority of Canada.	849
Chap. 26....	An Act to consolidate and amend the Acts relating to Town Corporations.	Legislature in defining powers of corporations has included some which are, at least, of doubtful authority.	849
Chap. 28....	An Act respecting Real Property in the Province of Manitoba.	Section 146 makes provision for punishment of certain offences against Act which appears to trench on criminal law.	849
Chap. 41....	An Act to amend Chap. 58 of the Consolidated Statutes of Manitoba and Chap. 15, 46 and 47 Vict., of the Province of Manitoba.	By sec. 2 the superintendent of Manitoba insane asylum shall not be compelled to obey subpoena in any case, civil or criminal. So far as this affects procedure in criminal cases it is <i>ultra vires</i> .	849



TABLE OF ACTS, 1867-1895—*Continued.*MANITOBA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
49 Vict., 1886, chap. 5.	An Act respecting Probate and Administration.	By secs. 4 and 5 provision is made for administration of estate of persons dying intestate without known heirs or next of kin. Pending settlement of question of escheat, no objection to allowing provincial authorities to administer such estates, if steps are taken to obtain a decision of question, and the interests of Canada are not prejudiced.	853
Chap. 15. . . .	An Act respecting County Court Judges.	Provisions of sec. 3 by which it is enacted that a county court judge shall not do certain acts under the penalty of forfeiture of office is <i>ultra vires</i> .	853
Chap. 29. . . .	An Act respecting the Election of Members of the Legislative Assembly.	Deals with matters, the subject of the criminal law. See Revised Statutes of Canada, chap. 168, sec. 55.	853
Chap. 41. . . .	An Act to further amend the Marriage License Law.	The Act authorizing the Lieutenant-Governor to appoint deputies having been disallowed, the provision in Act authorizing issue of marriage licenses under hand and seal of Lieutenant-Governor "or his deputy duly licensed in that behalf," should be repealed.	854
Chap. 45. . . .	An Act respecting Assignments for the benefit of creditors.	Great doubt exists as to authority of legislature to enact such laws, as they are in the nature of insolvent Acts.	854
Chap. 52. . . .	An Act to consolidate and amend the laws relating to Municipal Corporations.	Sections 347 and 349 defining power of municipal and civic councils to make by-laws, are open to objections frequently made in similar cases. Secs. 366 and 367 and 734 deal with criminal law and are unnecessary. See Revised Statutes of Canada, chap. 157, sec. 8; chap. 162, sec. 34; chap. 174, sec. 28, <i>et seq.</i>	854
Chap. 59. . . .	An Act to incorporate the Saskatchewan and Western Railway Company.	Power to build branch lines granted by the Act, should be subject to the provision in 46-47 Victoria (Manitoba), chap. 47, as to building of lines in the added territory south of the Canadian Pacific Railway, except such as run south-west and not within 15 miles of latitude 49°.	854
Chap. 65. . . .	An Act to incorporate the Shell River Railway Company.		
70 Vict., 1887, chap. 8.	An Act to amend chap. 45 of 49 Victoria.	Original Act, of which this is an amending Act, is substantially an insolvent Act, and many of its provisions, therefore, are <i>ultra vires</i> of a provincial legislature.	859
Chap. 9. . . .	An Act respecting County Courts.	Sec. 9 infringes upon appointing power of Governor General under British North America Act, as assuming to define or limit qualifications of county court judge. Secs. 92 and 231 infringe upon the subject of criminal law.	859
Chap. 20. . . .	An Act respecting the Treasury Department and the Auditing of Public Accounts.	Sec. 55 is in conflict with sec. 35 of chap. 164, Revised Statutes of Canada, and is an encroachment upon the criminal law.	860

TABLE OF ACTS, 1867-1895—*Continued.*MANITOBA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
51 Vict., 1888, chap. 5.	An Act providing for the construction of certain Railway Lines.	Sec. 8 purports to enable the railway commissioners to expropriate the public Crown lands of Canada, which is beyond the competence of the provincial legislature.	896
Chap. 6....	An Act respecting Expropriation of Lands.	Open to the same objection, as chap. 5, sec. 22, providing for determination of compensation for lands taken, is <i>ultra vires</i> .	896
Chap. 20....	An Act to amend chap. 5 of 50 Victoria, intituled :	Original Act relates more or less to the subject of insolvency.	897
Chap. 38....	An Act to amend chap. 47 of the Acts passed in 46th and 47th years of Her present Majesty's reign, being an Act to encourage the building of railways in Manitoba.	Sec. 5, subsec. 22, is legislation in reference to aliens, over which the parliament of Canada has exclusive jurisdiction.	897
Chap. 47....	An Act to incorporate the Brandon and Rock Lake Railway Company.	Infringes upon the provisions of art. 10 of sec. 92 of the British North America Act, permitting provinces to enact laws in respect to local works and undertakings * * * except lines of railway * * * extending beyond limits of province. If the line joins that of the Canadian Pacific Railway, this is by sec. 306 of the Railway Act declared to be for "the general advantage of Canada," and therefore exempted from the legislative jurisdiction of the province. Sec. 15 deals with the subject of aliens.	897
Chap. 48....	An Act to amend an Act to incorporate the Brandon, Souris and Turtle Mountain Railway Company.	Open to same objection as chap. 47. ....	898
Chap. 49....	An Act to incorporate the Emerson and North-western Railway Company.	Open to same objection as chap. 47. Sec. 17 provides for deposit of mortgage in office of Secretary of State for Canada, an office not in any way subject to legislative authority of provincial legislature.	898
Chap. 50....	An Act to incorporate the Emerson, Souris and Brandon Railway Company.	Subject to same objections as chap. 47, and also contains provisions relating to aliens. Sec. 3 is <i>ultra vires</i> , as dealing with the building of bridges and other erections over navigable waters.	898
Chap. 51....	An Act to incorporate the Manitoba Central Railway Company.	Open to same objections as chap. 47. ....	899
Chap. 52....	An Act to incorporate the Turtle Mountain and Manitoba Railway Company.	do do do . . . .	899
Chap. 53....	An Act to incorporate the Winnipeg and South-eastern Railway Company.	do do do . . . .	899
52 Vict., 1888-89, chap. 2.	An Act respecting the Northern Pacific and Manitoba Railway Company.	Sec. 4 appears to infringe sec. 92, art. 10, of British North America Act, permitting the province to enact laws in respect to local works and undertakings, except lines of railway * * * extending beyond limits of province.	912

TABLE OF ACTS, 1867-1895—*Continued.*MANITOBA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
49 Vict., 1888-89, chap. 19.	An Act to provide for the crossing of one railway by another.	Questionable whether provincial legislature can, by legislation, interfere with a railway authorized to be built by parliament.	912
Chap. 51....	An Act to incorporate the Selkirk Eastern and Western Colonization Railway Company.	See remarks on disallowance on chap. 4 of 50 Victoria, 1887, page 857. Sec. 3, authorizing construction of bridges, infringes upon the exclusive power of legislation by parliament upon the question of navigation.	914
53 Vict., 1890, chap. 7.	An Act respecting the cancellation and amendment of Plans.	Provides that cancellation of plan or subdivision of plan of town or village site; may be annulled, varied or amended. Provincial legislature cannot legislate as respects any tract of land, including lots not patented by the Crown.	928
Chap. 8. ...	An Act to amend the Act respecting the cancellation and amendment of plans.	Makes provision for payment into court of money in certain cases. Open to the same objection as chap. 7.	
Chap. 49....	An Act to provide special surveys in any city, town or village.	Provides for correcting of supposed errors in existing surveys of plans or sites of towns or villages. Open to the same objection as chaps. 7 and 8.	
Chap. 14....	An Act to provide that the English language shall be the official language of the province of Manitoba.	Power of local legislature to amend or repeal sec. 23 of the Manitoba Act, 33 Victoria, chap. 3, admits of great doubt.	928
Chap. 15....	An Act respecting the Executive Administration of Laws of this Province.	Is transcript of Act passed by Ontario legislature in 1888, chap. 5, the constitutionality of which is being now adjudicated upon.	929
Chap. 20....	An Act respecting Petty Trespasses....	Section 1 bears close relation to criminal law.	929
Chap. 30....	An Act respecting the Public Health....	Sections 2 and 4 appear to infringe on the exclusive power of parliament to legislate as to trade and commerce and to quarantine.	929
Chap. 32....	An Act for the protection of Game and Fur bearing Animals.	Sections 6 and 7 not within authority of legislature, as affecting trade and commerce. Sec. 8 legislates as to game. No provision in British North America Act specifically gives power to legislature to legislate as to game. In province all lands were, and all ungranted lands are still, the property of Canada.	929
Chap. 37....	An Act respecting the Department of Education.	See pp. 950 to 988.....	947
Chap. 38....	An Act respecting Public Schools....		
Chap. 51....	An Act respecting Municipal Institutions.	A number of provisions are <i>ultra vires</i> . Section 469 does not give city of Winnipeg power (otherwise than as Acts of Canada may allow) authority to construct works in that section mentioned.	930
Chap. 61....	An Act respecting the Winnipeg and Duluth Railway Company.	Act authorizes construction of railway from Winnipeg to international boundary. Doubtful if this is a local work or undertaking within meaning of British North America Act, sec. 92, Act 10 (a).	930



TABLE OF ACTS, 1867-1895—*Continued.*MANITOBA—*Concluded.*

Act.	Title.	Reasons for Objection or Comment.	Page.
54 Vict., 1891, chap. 33.	An Act to incorporate the Norwood Bridge Company.	In so far as Act seeks to authorize construction of bridge over Red River (a navigable river) Act is beyond the competence of provincial legislature.	991
56 Vict., 1893, chap. 45.	An Act to incorporate the Melita Northern Railway Company.	May in effect authorize construction of lines of railway connecting two provinces or extending beyond the limits of province, and if so, is beyond the competence of provincial legislature.	993
Chap. 46....	An Act to amend an Act to incorporate the Miniota North-western Railway Company.		
Chap. 47....	An Act to incorporate the Winnipeg Canal and Water Power Company.		
57 Vict., 1894, chap. 28.	An Act to amend the Public Schools Act.	Provisions appear to be intended to empower company to divert the waters and occupy beds of rivers which are the property of Canada, and in that view is <i>ultra vires</i> of provincial legislature.	993
Chap. 43....	An Act to incorporate the Manitoba Farming, Colonization and Water Company, (Limited).	See pp. 995 to 1004.	
Chap. 47....	An Act to incorporate the Winnipeg Natural Gas and Petroleum Company.	Section 12 trenches upon subject of criminal law, and is <i>ultra vires</i> .	994
58-59 Vict., 1895, chap. 6.	An Act respecting the constitution and practice of the Court of Queen's Bench.	Section 31 do do	994
		Is <i>ultra vires</i> , so far as it intends to constitute judges of the county court, as local judges of court of queen's bench.	1006

## BRITISH COLUMBIA.

35 Vict., 1872, chap. 4.	An Act to define the privileges, immunities and powers of the Legislative Assembly, and to give summary protection to persons employed in the publication of Sessional Papers.	This Act appears to be a transcript of the Act of Ontario, 32 Victoria, chap. 3, 1868, which was disallowed as <i>ultra vires</i> .	1014
Chap. 12....	An Act to make provision for inquiries respecting public matters.	Sec. 2 declares any wilfully false statement, &c., to be a misdemeanour. This properly belongs to criminal law.	1015
Chap. 31 ...	An Act to amend the Land Ordinance, 1870.	Sec. 4 is objectionable for the same reason as stated respecting chap. 12.	1015
Chap. 35....	An Act respecting Municipalities....	Sec. 18 do do do ...	1015
Chap. 26....	An Act respecting the Registration of Births, Deaths and Marriages in the Province of British Columbia.	It may be questioned whether this is not dealing with statistics.	1015
Chap. 36....	An Act to make provision for the Registration in British Columbia of certain Foreign Companies.	The opinion expressed that no foreign company having other than "provincial objects" could legally be registered under this Act.	1015
37 Vict., 1873-74, chap. 4.	An Act to extend the provisions of the Coroner's Jury Act, 1866, to the mainland of British Columbia.	This Act gives the coroner power to empanel a jury of not less than six for the purpose of any inquisition. It is questionable whether this is not a branch of criminal procedure.	1029

TABLE OF ACTS, 1867-1895—*Continued.*BRITISH COLUMBIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
37 Vict., 1873-74, chap. 12.	An Act to make better provision for the Qualification and Registration of Voters.	Sec. 15 speaks of the conviction of an "offence,"	1029
38 Vict., 1875, chap. 18.	An Act to make Powers of Attorney valid in certain cases.	Sec. 7 appears to trench upon the criminal law.	1037
39 Vict., 1876, chap. 1.	An Act to amend the Municipality Act, 1872, and amendments thereto.	This Act contains several provisions with reference to licenses, with respect to which the power of local legislatures is in controversy.	1040
Chap. 2.....	An Act to amend and consolidate the Public Acts.	Sec. 43 speaks of "offences".....	1040
Chap. 3.....	An Act to provide for the maintenance of the Wagon Road from Yale to Cariboo.	Pointed out that the principle of this Act might be so extended, as to raise the question whether such legislation does not trench upon the regulation of trade and commerce.	1040
Chap. 5.....	An Act to make better provision for the Qualification of Voters.	Sec. 13 seems to trench upon criminal law.	1041
Chap. 8.....	An Act to Assess, Levy and Collect Taxes on Property in British Columbia.	Sec. 10—The exemption from the fixed tax of five cents on unoccupied land is not as extensive as the exemption from the tax on the assessed value, and might be argued to include lands "held as Dominion railway lands" or to be conveyed to the Dominion government under the 11th section of the terms of union," which are exempted from the operation of the 8th section. Sec. 38 appears to trench upon the criminal law. Sec. 13, schedule B, deals with the subject of census and statistics, but similar legislation in other provinces has been left to its operation.	1041
39 Vict., 1876, chap. 11.	An Act to amend the Licenses Ordinance, 1867.	This Act attempts to regulate Trade and Commerce, and is opposed to the spirit of the Union Act, and in violation of sound principles of taxation, and of mischievous tendency.	1042
Chap. 12.....	An Act to further amend the Licenses Ordinance, 1867.	The remarks made upon chap. 11 apply also to this.	1043
Chap. 24.....	An Act to amend the Power of Attorney Act, 1875.	This Act does not properly amend the criminal provisions of the Act of 1875; objected to.	1043
40 Vict., 1877, chap. 5.	An Act respecting the qualification for the offices of Mayor and Councilors in certain municipalities.	Section 4 and 6 provide punishment for making false declaration.	1046
Chap. 6.....	An Act to enable Municipal Corporations to pass By Law for the sale of Lands for Taxe.	Section 3 appears to deal with question of interest.	1046
Chap. 9.....	An Act to authorize certain municipalities to retain and use the Court fines, fees and forfeitures as part of the Civic Revenue.	This is wide enough to include fines, &c., for breaches of the criminal law of Canada.	1046

TABLE OF ACTS, 1867-1895—*Continued.*BRITISH COLUMBIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
40 Vict., 1877, chap. 10.	An Act to amend the Assessment Act, 1876.	The power to tax the salaries of persons in the service of the Dominion, was under consideration of the Court of Appeal of Ontario in <i>re Leprohon vs. City of Ottawa</i> , when this Act was left to its operation.	1047
Chap. 11....	An Act to prevent the destruction of pasturage on the Islands, in the Gulf of Georgia.	Sections 8 and 9 use the term "offence."	1047
Chap. 13....	An Act to encourage the Mining of Gold-Bearing Quartz.	Section 4, providing that the loan or payment of \$15,000 by the province to the company erecting the first quartz mill, at a specified place, shall constitute a first mortgage on all the property of the company, might interfere with the vested rights of private individuals.	1047
Chap. 14....	An Act relating to Minerals other than Coal.	Section 11, upon this section the danger is pointed out of allowing legislation which increases from time to time the jurisdiction of the mining court, the judge of which has not been appointed by the Governor General. Section 14 applies the Act to unoccupied and unreserved crown lands. The two years limit of the terms of union having expired, this is within their competence, but the inconvenience which might arise from selling lands contiguous to any possible line for the Pacific railway is pointed out.	1048
Chap. 15....	An Act to make regulations with respect to Coal Mines.	The word "offence" already objected to occurs fifty-two times in this act. Sec. 14, deals with weights and measures. Sec. 32, deals with criminal law. Sec. 46, subsec. 28, deals with malicious injury to property.	1050
Chap. 18....	An Act to amend the Election Regulation Act, 1871.	Section 8 uses the word "offence."	1051
Chap. 19....	An Act to amend the Law relating to procedure at Elections of Members of the Legislative Assembly of British Columbia.	Section 11, subsec. 1, so far as relates to forging or counterfeiting, trenches upon the criminal law.	1051
Chap. 24....	An Act to consolidate the laws relating to the Legal Profession in this Province.	Provisions of this Act place restrictions upon admissions of barristers and attorneys to practice in the courts of province. Dominion interests possibly prejudiced, if judges for courts of province had to be selected from the bar of the province.	1056
Chap. 30....	An Act to prohibit the sale or gift of Intoxicating Liquors to Minors, and to prevent the frequenting of Liquor Saloons by such persons.	Section 23 deals with criminal law. Sec. 3 uses the word "offence."	1052
41-42 Vict., 1878, chap. 36.	An Act to amend the Assessment Act, 1876.	According to the decision in <i>re Ross vs. Torrance</i> , the attempt to add 25 per cent and 18 per cent interest thereon to unpaid taxes, is void. The other provisions of the Act, though stringent, are within the powers of the legislature and were presumed to have been found necessary.	1067



TABLE OF ACTS, 1867-1895—*Continued.*BRITISH COLUMBIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
42 Vict., 1879, chap. 12.	An Act to amend the practice and procedure of the Supreme Court of British Columbia, and for other purposes relating to the better administration of justice.	Objection taken by judges to 12th section empowering Lieutenant - Governor in Council to make rules of court, as making them more under control of provincial legislation than they, as Dominion officers should be, and that their independence as judges may be interfered with. Sec. 14 in so far as it assumes to change the present practice of holding courts for the trial of criminal cases, is beyond the power of the provincial legislature.	1075
Chap. 13....	"The Judicial District Act," 1879....	Policy of Act adopted by parliament of Canada, and provision being made for salaries of two additional judges provided for by Act, it was left to its operation.	1076
Chap. 23....	An Act to amend the Licenses Ordinance, 1867.	Question whether Act was not an interference with regulations of trade and commerce seemed to require consideration, but as Act was deemed to come within subsec. 9 of sec. 92 of British North America Act, it was left to its operation.	1077
Chap. 30....	The Public Schools Act, 1879 .....	Section 25 declares a false declaration of a right to vote a "misdemeanour."	1075
43 Vict., 1880, chap. 4.	An Act to abolish the priority of and amongst execution creditors.	Seems to entrench upon the question of bankruptcy and insolvency.	1078
Chap. 10....	An Act respecting the fraudulent preference of creditors by persons in insolvent circumstances.	Seems to entrench upon the subject matter of insolvency.	1078
44 Vict., 1881, chap. 1.	An Act to carry out the objects of the better administration of Justice Act, 1878, and the Judicial District Act, 1879.	Provisions of Act objected to by the judges, but as Order in Council under section 7 has been sanctioned by Governor General in Council, Act left to its operation.	1079
Chap. 15....	An Act to amend the Gold Mining and Mineral Acts.	Section 10 objected to, but as provisions are clearly connected with administration of justice in the province, and the jurisdiction of a provincial court, Act left to its operation.	1079
46 Vict., 1883, chap. 5.	An Act relating to County Courts....	Question arose as to inconvenience occasioned by existence of Act, in view of fact that new county court judges not appointed, but as sec. 34 provides that in any cases where the office of a county court judge in any district is vacant or not filled up, it is lawful for judge of supreme court to perform the duties, Act left to its operation.	1089
Chap. 10.	An Act to amend the Sumass Dyking Act, 1878.	Act petitioned against on ground that it is an alteration without consent, and that it is <i>ex post facto</i> and retroactive and provisions unfair and tyrannical, but as Act is within legislative authority of province, it was left to its operation.	1090

TABLE OF ACTS, 1867-1895—*Continued.*BRITISH COLUMBIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
46 Vict., 1883, chap. 25.	An Act to incorporate the Columbia and Kootenay Railway Company.	Act gives company power to establish a line of steamships. Questions arise. Will company by means of steamships divert trade from Canadian railways and territory, to United States railways and territory, and does Act authorize the company to establish a line of steamships between this province and a foreign country? Request made that the Act be amended by providing that nothing therein contained shall authorize the company to establish a line of steamships between this province and any British or foreign country.	1088
47 Vict., 1884, chap. 2.	An Act to prevent Chinese from acquiring Crown Lands.	(Question arises as to constitutionality of Acts applying to a portion and not to the whole, of the population of the province. Question also as to whether or not the legislature, in the exercise of its powers to impose a direct tax, can so impose it as to limit or restrict that intercourse among people of different nations, which constitute one of the elements of commerce.	1094
Chap. 4....	An Act to regulate the Chinese population of British Columbia.		
48 Vict., 1885, chap. 25.	An Act to consolidate the Public Schools Act.	Section 51 provides that any person wilfully making false declaration of his right to vote, shall be guilty of "misdemeanour." Trenches on criminal law. See 32 and 33 Victoria, chap. 23, sec. 2.	1104
Chap. 26....	An Act to authorize the appointment of a Commission of inquiry concerning the genuineness of an alleged transfer, dated 23rd June, from certain Indians to one J. M. M. Spinks.	Section 1 provides that any witness who on investigation therein mentioned, shall make any false statement or oath, or affirmation, shall incur a penalty of \$500.	1104
Chap. 28....	An Act for the abolition of certain tolls.	Principle of Act might be so extended, as to render it necessary to consider the question whether such legislation does not trench on regulation of trade and commerce.	1104
49 Vict., 1886, chap. 20.	An Act respecting Land Surveyors and the Survey of Land.	These Acts, chap. 20, (sec. 8), chap. 25, (sec. 23,) chap. 32, (sec. 184), chap. 33, (secs. 12, 14, 23, and 28), chap. 35, (secs. 11, 13, 21 and 25), contain provisions conflicting with criminal law. Provisions of sec. 197 of chap. 32 should be limited in its application to fines and penalties under legislative control of British Columbia legislature. Sec. 142 of chap. 32 contains provisions open to question.	1107
Chap. 25....	An Act to incorporate the Vancouver Electric Light Company.		
Chap. 32....	An Act to incorporate the City of Vancouver.		
Chap. 33....	An Act to incorporate the Coquitlam Water Works Company (Limited).		
Chap. 35....	An Act to incorporate the Vancouver Water Works Company, 1886.		
51 Vict., 1888, chap. 35.	An Act for granting certain sums of money for the public service of the Province of British Columbia.	Section 1 and schedule B authorize payment of money for services in connection with graving dock at Esquimaux. Same to be chargeable to Dominion government. Claim not properly chargeable to the Dominion government, and no recognition could be made of the claim.	1112

TABLE OF ACTS, 1867-1895—*Continued.*BRITISH COLUMBIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
51 Vict., 1888, chap. 39.	An Act to prevent the spreading of noxious weeds.	Doubtful if within power of legislature. Is more legislation affecting the criminal law. Provisions of the Act itself are objectionable.	1113
Chap. 42....	An Act relative to the corporation of the City of New Westminster.	Section 1 is of doubtful validity, in view of exclusive powers of parliament on subject of bills of exchange and promissory notes. Sec. 102 provides for payment of judge while engaged in revising of assessment lists objectionable, which can only be done by parliament. Sec. 142 gives power to pass by-laws on subjects, which are matters within exclusive authority of parliament.	1113
Chap. 44....	An Act to incorporate the Crow's Nest and Kootenay Lake Railway Company.	Sec. 23 infringes on the legislative authority of the Dominion parliament in regard to bills of exchange and promissory notes.	1116
Chap. 46....	An Act to incorporate the Kootenay Railway and Navigation Company.	The objects for which the company is incorporated are not "local works and undertakings" within the meaning of sec. 92 of the British North America Act, but come within exceptions "A" and "B" of art. 10.	1116
52 Vict., 1889, chap. 18.	An Act to amend the Law relating to Municipalities, and to repeal 51 Victoria, chap. 88, intituled: "An Act respecting Municipalities."	Powers granted to municipal councils objectionable.	1117
Chap. 29....	An Act to prevent trespass on inclosed Grounds.	Trenches on the criminal law and the Act respecting malicious injuries to property.	1117
Chap. 33....	An Act to amend the New Westminster Act, 1888.	See report of the Minister of Justice on chap. 42 of 1888, page 1113. Act objectionable as granting enlarged power to city council to pass by-laws.	1117
Chap. 34....	An Act to incorporate the Canadian Western Central Railway Company.	Sec. 34 authorizes the issue of bills of exchange and promissory notes.	1117
Chap. 35....	An Act to incorporate the Columbia and Kootenay Railway and Navigation Company.	Infringes on the provisions of sec. 92, subsec. 10, of British North America Act, by incorporating a line of steamships between the province and a foreign country.	1118
Chap. 36....	An Act to amend the New Westminster Southern Railway Company Act.	Authority granted to bridge the Fraser River (a navigable stream) is an interference with the powers of parliament.	1118
Chap. 40....	An Act to amend the Vancouver Incorporation Act, 1866, and the Vancouver Incorporation Amendment Act, 1887.	The power of the provincial legislature to authorize a municipal council to pass by-laws on subjects mentioned in the Act is doubtful. See report of the Minister of Justice on Quebec legislation of 1889, pages 432, 437.	1118
53 Vict., 1890, chap. 3	An Act for establishing a Juvenile Reformatory.	Sec. 4, providing for the transfer of a boy from common jail to reformatory, is <i>ultra vires</i> if the prisoner was committed under any other authority than that of a provincial legislature.	1120



TABLE OF ACTS, 1867-1895—*Continued.*BRITISH COLUMBIA—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
53 Vict., 1890, chap. 12.	An Act to amend the Game Protection Act.	Operates directly as a restriction on trade and commerce. Parliament has also legislated respecting the exportation of game (Revised Statutes of Canada, chap. 33, sec. 7).	1121
Chap. 16....	An Act to incorporate the Columbia and Kootenay Railway and Navigation Company.	Objects of company are not provincial but international.	1121
Chap. 20....	An Act to incorporate the New Westminster Electric Light and Motor Power Company.	Sec. 27, providing for a fine in case of employment by the company of any Chinese, is open to question, as being legislation affecting aliens.	1121
Chap. 68....	An Act to regulate the clearing of Rivers and Streams.	The interest of Canada in the rivers in question has not been duly protected. The local legislature may not interfere with the beds of rivers ungranted at the time of the passing of the British North America Act, they being the property of Canada.	1122
54 Vict., 1891, chap. 1.	An Act for the Protection of Cattle...	Doubtful if legislation imposing the obligations and requirements of the provincial Fence Act upon railways under jurisdiction of Canada is within the power of the local legislature.	1124
Chap. 6....	An Act to prevent the spread of Contagious Diseases among Horses and other Domestic Animals.	Provisions of the Act infringe on the exclusive powers of parliament to legislate respecting quarantine and respecting trade and commerce.	1125
Chap. 14....	An Act to further amend the Jurors Act.	Secs. 8 to 15 deal with the subject of juries in connection with the trial of criminal cases. They relate to procedure, and are therefore beyond provincial jurisdiction.	1125
Chap. 29....	An Act to consolidate and amend the Municipal Acts.	The powers given to municipal councils by sec. 96 are somewhat extensive.	1125
55 Vict., 1892, chap. 20.	An Act to amend and consolidate the Acts for the protection of certain animals, birds and fishes.	Doubtful if provincial legislature has power to prohibit the export of any articles produced in the province.	1135
Chap. 33....	The Municipal Act of 1892.....	Doubtful if powers conferred upon municipal institutions to pass by-laws are within legislative competency of legislature.	1135
Chap. 48....	An Act to incorporate the Canadian Northern Railway.	Provincial legislature does not possess power to incorporate a company of this character inasmuch as it is in effect a line of railway between two provinces.	1135
56 Vict., 1893, chap. 15.	An Act respecting the Public Health..	Sec. 12 relates to matter of quarantine and can only have effect in matters outside control of parliament and within control of province.	1145
Chap. 30....	An Act to amend the Municipal Act, 1892.	Sec. 18      do      do      do	1145

TABLE OF ACTS, 1867-1895—*Continued.*BRITISH COLUMBIA—*Concluded.*

Act.	Title.	Reasons for Objection or Comment.	Page.
56 Vict., 1893, chap. 51.	An Act to incorporate the Kaslo Electric Light Power and Waterworks Company (Limited).	Provisions intending to empower the companies to divert waters, or occupy bed of river are <i>ultra vires</i> of provincial legislature, so far as they relate to rivers which have been declared by British North America Act to be part of property of Canada.	1146
Chap. 59....	An Act to incorporate the Osoyoos and Okanagan Railway Company.		
57 Vict., 1894, chap. 12.	An Act respecting the Draining and Dyking and Irrigation of Lands.	Sec. 63 trenches on subject of criminal law, and therefore <i>ultra vires</i> of provincial legislature.	1148
Chap. 18....	An Act to amend the Game Protection Act, 1892, and amending Act.	Sec. 3 pertains to subject of sea-coast and inland fisheries, and could not, therefore, be enacted by provincial legislature.	1149
Chap. 33. . .	An Act to amend the Placer Mining Act, 1891.	Sec. 10 is <i>ultra vires</i> of provincial legislature as applied to rivers which belonged to the province at the time it entered confederation.	1149
Chap. 62....	An Act to authorize certain Dyking and Draining Works in the District of New Westminster.	Secs. 1, 6 and 7      do      do	1149
Chap. 63....	An Act respecting the Victoria Electric Railway and Lighting Company (Limited).	Sec. 31 trenches upon subject of criminal law as dealing with malicious injury to property, and is, therefore, not within scope of provincial legislature.	1148
58 Vict., 1895, chap. 18.	An Act respecting lands granted to the Dominion Government.	Sec. 4 authorizes Lieutenant-Governor by Order in Council, to make provision for defining and causing title of Dominion government to be registered under Land Registry Laws. If this section would have effect of impairing title of Dominion government in case it were not registered, the section is <i>ultra vires</i> . Sec. 7 provides that any Order in Council made by Lieutenant-Governor under the Act shall have force of statute.	1151
Chap. 23....	An Act to amend and consolidate the Acts for the protection of certain animals, birds and fishes.	Sec. 7 makes it unlawful to export game out of province. This provision would appear to be beyond provincial authority.	1152
Chap. 62....	An Act for the supply of water to the City of Nanaimo.	Contain provisions which appear to assume right of legislature to legislate with regard to rivers. Chap. 67 contains provision assuming to legislate respecting aliens.	1152
Chap. 63. . .	An Act respecting the amendment of the Nanaimo Waterworks Act, 1895, and amending Acts.		
Chap. 67..	An Act respecting the incorporation of the Slave River Electric and Power Company (Limited).		
Chap. 68.	An Act respecting the Vancouver Incorporation Act and amendment Acts.	Powers conferred upon a corporation to make by-laws in some cases, seem to be in excess of those that could be granted by provincial legislature.	1152
Chap. 69..	An Act to incorporate the Victoria Consolidated Hydraulic Mining Company.	Contains provision assuming to legislate respecting aliens.	1152

TABLE OF ACTS, 1867-1895—*Continued.*

## PRINCE EDWARD ISLAND.

Act.	Title.	Reasons for Objection or Comment.	Page.
37 Vict., 1874, chap. 1.	An Act to amend an Act passed in the 36th year of the reign of Her Majesty Queen Victoria, intituled: "An Act to establish County Courts of Judicature in this Island."	Section 29, giving the judge certain powers in cases of perjury, is an interference with criminal law and procedure.	1158
Chap. 8....	An Act to consolidate and amend the Laws enabling the Supreme Court of Judicature to order the examination of witnesses upon interrogatories and otherwise.	Section 5 interferes with criminal law and procedure in reference to perjury.	1158
Chap. 13....	An Act to incorporate the Prince Edward Island Chamber of Commerce.	Dominion Act, 37 Victoria, chap, 51, 1874, provides generally for the incorporation of boards of trade, and is applicable to Prince Edward Island.	1158
Chap. 21....	An Act to amend the Law relating to Controverted Elections of Members to serve in the General Assembly of Prince Edward Island, and for providing more effectually for the Prevention of Corrupt Practices at Elections.	Section 36 provides penalties for perjury..	1159
38 Vict., 1875, chap. 1.	An Act to incorporate the Merchants' Marine Insurance Company of Prince Edward Island.	Section 2 does not properly restrict the business to be done in the province.	1162
Chap. 6....	An Act to amend the Act to extend the Criminal Jurisdiction of the Police Court in the City of Charlottetown.	Sections 2 and 3 alter the penalties for certain crimes.	1162
39 Vict., 1876, chap. 2.	An Act regulating the sale by license of spirituous liquors.	Sections 2 and 7 use the term "offence." Section 16 provides a penalty for selling liquor to an Indian—a matter fully provided for by the 79th and following sections of 39 Victoria, chap. 18, 1876 (Canada). Section 49, providing a penalty for obstructing a constable, comes within the criminal law. Section 52 uses the term "offence" in an objectionable way, as applied to action required to be taken by the grand jury at the commencement of a prosecution. Sections 55, 58 and 59 employ the words "offence" and "offender."	1180
Chap. 9....	An Act to amend the Insolvent Debtors' Act.	The use of the phrases "insolvent" and "insolvent debtor" is calculated to create embarrassment, but the Act hereby amended is not in the proper sense an insolvent law, being rather a law to mitigate the hardships of imprisonment for debt.	1181
Chap. 16....	An Act enabling the Stipendiary Magistrate of the City of Charlottetown to grant relief to insolvent debtors.	To this Act the observations made with reference to chap. 9 are applicable.	1182
Chap. 17....	An Act relating to Coroners' Inquests.	Doubt was expressed with reference to Act of British Columbia, 37 Victoria, No. 4, whether such legislation was not an interference with criminal procedure, but as no suggestion was made in that case, the same course was followed in this instance.	1182



TABLE OF ACTS, 1867-1895—*Continued.*PRINCE EDWARD ISLAND—*Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
39 Vict., 1876, chap. 21.	An Act respecting the Town of Summerside.	Section 4 uses the words "offence" and "offenders."	1182
Chap. 26. . .	An Act to incorporate the Acadia Provident Association.	No limit to the range of business. . . . .	1182
Chap. 27. . .	An Act for the incorporation of the Victoria Boring and Mining Company.	do do do . . . . .	1182
40 <sup>2</sup> Vict., 1877, chap. 1.	The Public Schools Act, 1877. . . . .	Objected to on ground that it interfered with rights of Catholic community of province as secured to them by 93rd section of British North America Act. Bill will have effect of closing the separate schools which for a long time have existed among the French.	1189
Chap. 14. . .	An Act to amend an Act to incorporate the Town of Charlottetown.	Section 5 provides that the clerk of the stipendiary magistrate shall pay over all fines, &c., to the city treasurer.	1197
Chap. 16. . .	An Act to alter and amend the Act to incorporate the Minister and Trustees of St. James's Church, Charlottetown.	Sections 5 and 8 appear to interfere with the subject of interest.	1199
Chap. 20. . .	The Registration of Electors and Ballot Act of Prince Edward Island, 1877.	Section 101 entrenches upon the criminal law, so far as it relates to the counterfeiting or altering fraudulently any ballot paper, &c.	1199
41 Vict., 1878, chap. 12.	The County Courts Amendment Act, 1878.	Section 61 allows the judge of a county court a fee of 50 cents for taxing the costs in a suit. It was considered inadvisable that a provincial legislature should interfere with the emoluments of a county judge already fixed by the parliament of Canada.	1202
Chap. 13. . .	An Act to amend an Act regulating the Sale by License of Spirituous Liquors.	Some of the provisions of these Acts may be held to be beyond the legislative authority of provincial legislature as encroaching upon the regulation of trade and commerce.	1203
42 Vict., 1880, chap. 13.	An Act to amend an Act regulating the Sale by licenses of Spirituous Liquors.		1206
44 Vict., 1881, chap. 18.	An Act respecting the Administration by the Crown of the Estates of Intestates in certain cases.	Provisions of the Act would be illegal in the event of judgment of Supreme Court in case of <i>Mercer vs. Attorney General of Ontario</i> being upheld by Judicial Committee of Privy Council.	1207 1208
46 Vict., 1883, chap. 8.	An Act to continue certain Acts therein mentioned, viz., 24 Vict., chap. 7, and 26 Vict., chap. 10	Legislature could not now pass these Acts; the subject of sea-coast and inland fisheries being within exclusive legislative authority of parliament, so that it has no power to continue Acts in force.	1209
Chap. 11.	An Act relating to the Acts of the Dominion Parliament respecting Insolvent Banks, Insurance Companies, Building Societies and Trading Corporations.	Similar provisions made to those contained in Act 46 Vict. (Canada), chap. 23, and therefore Act was unnecessary.	1209
Chap. 25.	An Act to incorporate the Island Steam Navigation Company of Prince Edward Island.	Objects for which corporate powers are given are not stated. Impossible to say whether objects are provincial or not.	1209

TABLE OF ACTS, 1867-1895—*Continued.*PRINCE EDWARD ISLAND—*Concluded.*

Act.	Title.	Reasons for Objection or Comment.	Page.
48 Vict., 1885, chap. 10.	An Act to incorporate the Telephone Company of Prince Edward Island.	Trenches on criminal law of Canada, as dealing with malicious injuries to property.	1210
49 Vict., 1886, chap. 4.	An Act respecting the Public Health.	Deals with question of quarantine which is exclusively within the jurisdiction of parliament.	1211
50 Vict., 1887, chap. 8.	Charlottetown Waterworks Act, 1887.	Sections 19, 20 and 28 attach penalties to unlawful acts which are punishable under sec. 68, Revised Statutes of Canada, respecting malicious injuries to property.	1212
51 Vict., 1888, chap. 12.	An Act to consolidate and amend the several Acts incorporating the City of Charlottetown.	Sections of Act infringe on exclusive power of Dominion parliament to legislate in respect of trade and commerce, appointment of judges, &c.	1213
Chap. 14. . .	The Prince Edward Island Joint Stock Companies Act.	Section 62 infringes on authority of Dominion parliament respecting bills of exchange and promissory notes.	1214
53 Vict., 1890, chap. 21.	An Act to incorporate the Full Electric Company of Prince Edward Island.	Sections 35 and 36 appear to be legislation affecting the criminal law.	1215
56 Vict., 1893, chap. 1.	An Act respecting the Legislature. . . . .	Section 159 not in accordance with principles of legislation, as intending to limit the right which legislature constitutionally has, of repealing or altering previous Acts. Secs. 8, 9, 10 and 11 objected to, as local legislature does not, in absence of express grant from Imperial parliament, possess punitive powers	1227
57 Vict., 1894, chap. 1.	The Assessment Act, 1894 . . . . .	Object of Act is taxation for provincial purposes. Provides for payment of certain taxes in respect of land, and that owner, occupier and tenant shall be jointly and severally liable therefor. Question whether this class of taxation is not indirect, and therefore <i>ultra vires</i> of provincial legislature.	1229
Chap. 4. . . . .	An Act to impose a Direct Tax on certain class of traders.	Object of taxation is for provincial purposes. Act provides for payment by commercial travellers and non-resident vendors of goods and wares, an annual license fee or direct tax. Questionable whether such taxation is not indirect, and if so, whether legislation could be upheld by British North America Act. Validity of statute doubtful, by reason of authority of parliament in matters of trade and commerce.	1229
58 Vict., 1895, chap. 7.	The Land Purchase Act, 1895. . . . .	Act objected to and disallowance asked on grounds that Act is subversive of the rights of property. Act considered within competence of provincial legislature and complaints against Act are not well founded.	1234
Chap. 8. . . . .	An Act respecting the Commissioner of Public Works.	Act objected to on ground that sec. 7 seriously affects titles of many farms in province, and is <i>ex parte</i> legislation. Sec. 7 considered as merely declaratory of law as it previously stood. Act within competence of legislature and enactment complained of not unjust.	1234

TABLE OF ACTS, 1867-95—*Continued.*

## NORTH-WEST TERRITORIES.

Ordinance.	Title.	Reasons for Objection or Comment.	Page.
1883 :—			
No. 1. ....	An Ordinance respecting Infectious and Contagious Diseases.	Legislation on this subject is found in the Animal Contagious Diseases Act, 1879, which is applicable to North-West Territories, and legislation is superfluous.	1238
No. 2. ....	An Ordinance respecting Municipalities	Subsection 3 of paragraph 49, provides that persons occupying property of Crown in other than an official capacity shall be assessed in respect thereof, is in conflict with sec. 125 of British North America Act.	1238
1884 :—			
No. 4. ....	An Ordinance respecting Municipalities	Similar to those respecting Ordinance of 1883.	1241
No. 7. ....	An Ordinance respecting Controverted Elections.	Meaning of provisions of sec. 3 are not sufficiently clear.	1241
No. 31. ....	An Ordinance respecting Preferential Assignments.	Question whether, in advance of Dominion Act respecting bankruptcy or insolvency subject is one within legislative authority of a province or of Lieutenant-Governor North-west Territories.	1241
No. 5. ....	An Ordinance providing for the Organization of Schools in the North-west Territories.	Doubt as to authority of North-west Council to make Ordinance, passed under 10th section of "The North-west Territories Act, 1880."	1241
1885 :—			
No. 3. ....	An Ordinance to amend and consolidate, as amended, the School Ordinance of 1884.	Subsec. 2, of sec. 151, appears to trench upon criminal law. See 32-33 Vict., chap. 21, secs. 3 and 72.	1244
No. 15. ....	An Ordinance to amend, and consolidate as amended, Ordinance No. 1, of 1883, intituled: 'An Ordinance respecting Infectious and Contagious Diseases of Domestic Animals, and Ordinance No. 15, of 1884, intituled: 'An Ordinance to amend Ordinance No. 1, of 1883, respecting Infectious Diseases of Domestic Animals.'	Subject is one legislated upon by both Dominion and provincial legislatures, by latter probably under 95th section of British North America Act, the law of the legislature having effect, so far as not repugnant to Act of parliament of Canada.	1244
1886 :			
No. 2. ....	An Ordinance respecting the administration of Civil Justice.	Principle of allowing judges fees, as is done by this Ordinance is bad, and should not be given effect to in the Territories.	1247
No. 3.	An Ordinance respecting the incorporation of Joint Stock Companies by Letters Patent.	Order in Council of 7th July, 1887, gives Lieutenant-Governor power to incorporate companies with territorial objects with certain exceptions.	1247
No. 9.	An Ordinance to incorporate companies for the establishment of Cemeteries.	Section 29 trenches upon criminal law.	1247
1887 :			
No. 2.	An Ordinance respecting Schools.	Section 65 trenches upon the criminal law.	1248
No. 9.	An Ordinance to amend Ordinance No. 3 of 1886, intituled: "The Companies' Ordinance."	Sections 19, 20, 21 and 22 conflict with the provisions of the criminal law.	1248
1888 :			
No. 8.	An Ordinance respecting Municipalities.	Gives power to municipal councils to pass by-laws relating to certain subjects which are more or less under control of Dominion parliament, and therefore may or may not be <i>ultra vires</i> of council passing them. Secs. 120 and 239 objectionable, the latter possibly <i>ultra vires</i> as taking away from supreme court (in part) its jurisdiction.	1249



TABLE OF ACTS, 1867-1895—*Continued.*NORTH-WEST TERRITORIES—*Continued.*

Ordinance.	Title.	Reasons for Objection or Comment.	Page.
1888 :— No. 30.....	An Ordinance respecting the incorporation of Joint Stock Companies by Letters Patent.	Section 80 contains legislation upon the subjects of bills of exchange and promissory notes.	1250
No. 59.....	An Ordinance respecting Schools.....	Section 82 operates disadvantageously to certain localities of the North-west Territories. Ordinance does not conform strictly to requirements of Act (Revised Statutes of Canada, chap. 50), under which it is framed and therefore objectionable as being an interpretation by inferior legislative body, of the acts of its superior.	1250
1889 :— No. 10.....	An Ordinance respecting the Expropriation of Lands.	Does not contain provision for payment of land when expropriated. More appropriate that power to expropriate lands for school purposes should be vested in trustees of public school district. Power of expropriation vested in Lieutenant-Governor in Council, <i>i.e.</i> , advisory Council; whereas council only possesses such powers as are conferred by Dominion parliament.	1258
No. 14.....	An Ordinance respecting Justices of the Peace.	Legislative assembly has no jurisdiction to define qualifications of justices of the peace. Ordinance, therefore, is unauthorized limitation of powers of Lieutenant-Governor.	1258
No. 27.....	An Ordinance to incorporate the Medicine Hat General Hospital.	Ordinance does not specify object or purposes of the incorporation, and that object should be expressly stated in ordinance.	1258
1891-92 :— No. 1. . . .	An Ordinance respecting the Executive Government of the Territories.	<i>Ultra vires</i> of legislature, excepting so far as it may be considered and construed in relation to expenditure of territorial funds and moneys appropriated by parliament, as Lieutenant-Governor and assembly or any committee thereof, is authorized to expend, otherwise it would conflict with North-west Territories Act.	1260
No. 2. . . .	An Ordinance respecting Revenue and Expenditure.	Same remarks applicable as to Ordinance No. 1.	1262
No. 3.....	An Ordinance to amend the Interpretation Ordinance.		
No. 17.....	An Ordinance to further amend Chapter 30 of the Revised Ordinances, intitled, "The Companies Ordinance."	Ordinance in question, in so far as it affects telephone companies, is <i>ultra vires</i> of assembly.	1262
No. 27 . . .	An Ordinance respecting the protection of property.	Offence aimed at governed by sec. 255 of criminal code. Doubtful if ordinance is <i>intra vires</i> of legislative assembly.	1263
1892 :— No. 19 . . .	An Ordinance to amend and consolidate as amended, The Game Ordinance, and amendments thereto.	Section 11 open to question, as affecting the subject of trade and commerce, which is assigned by British North America Act, to parliament.	1265

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1892 :— No. 35 . . . . .	An Ordinance to amend certain Ordinances.	Intention of ordinance is to impose on executive committee of North-west Territories, the duty of advising Lieutenant-Governor upon matters connected with duties of his office, other than expenditure, thus conflicting with North-west Territories Act, can only have validity and effect as to matters which fall under control of Lieutenant-Governor, by virtue of ordinances enacted by the territorial legislature.	1266
1893 :— No. 25 . . . . .	An ordinance to abolish priority among Execution Creditors.	Provisions in conflict with Sec. 39 of the Territories Real Property Act. Has effect only so far as concerns property to which the Territories Real Property Act does not apply.	1269
No. 32 . . . . .	An ordinance to empower the Municipality of the Town of Edmonton to construct and operate a tramway.	Confers upon municipal corporation powers which parliament may not have contemplated that assembly should grant, should it have power to grant them.	1268
No. 33 . . . . .	An ordinance to incorporate the City of Calgary.	Sections 117 and 147 relate to subject of criminal law, and territorial legislature could not confer all the powers which the clauses appear to confer.	1270
1894 :— No. 3 . . . . .	An ordinance to amend and consolidate as amended The Municipal Ordinance, and the several ordinances amending the same.	In granting powers to municipal councils to pass by-laws, legislative assembly has exceeded powers conferred upon it by the North-west Territories Act, viz., subject of weights and measures.	1271
No. 5 . . . . .	An ordinance to amend the Judicature Ordinance.	Delay and inconvenience occasioned to suitors, as it is difficult to have writs executed in small debt cases by reason of inadequacy of fees granted to sheriffs and bailiffs by this ordinance.	1272
No. 6 . . . . .	An ordinance respecting the formation of Irrigation Districts.	Power of assembly to create a body corporate for purposes of irrigation, doubtful, as inconsistent with provisions of the North-west Territories Act and amendments. Under provisions of Ordinance, corporations are given borrowing powers which are not within contemplation of North-west Irrigation Act.	1273
No. 20 . . . . .	An ordinance to prevent trespass in pursuit of game.	Ordinance considered as within competence of legislature, but considered objectionable, as not adapted to circumstances of country, nor in accordance with sentiment of the inhabitants. Is exceptional in character, so far as game laws of Canada or provinces are concerned.	1273

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